

6-19-2009

State v. Beavers Clerk's Record v. 3 Dckt. 36183

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LAW CLERK

IN THE SUPREME COURT OF THE
STATE OF IDAHO

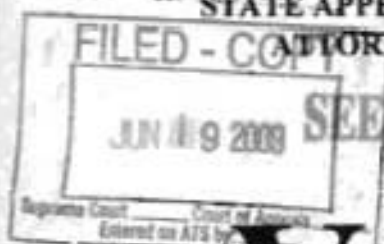
STATE OF IDAHO
PLAINTIFF/RESPONDENT
VS

DEFENDANT/APPELLANT
MARK BEAVERS

CLERK'S RECORD
APPEAL FROM THE DISTRICT COURT OF THE
FIRST JUDICIAL DISTRICT OF IDAHO, IN AND
FOR THE COUNTY OF KOOTENAI

LAWRENCE G. WASDEN
ATTORNEYS FOR RESPONDENT

MOLLY HUSKEY
STATE APPELLATE PUBLIC DEFENDER
ATTORNEYS FOR APPELLANT



SEE AUGMENTATION RECORD

VOL 3

36183

36191

Court Minutes:

Session: HOSACK061608A
Session Date: 06/16/2008
Judge: Hosack, Charles
Reporter: Schaller, Joann

Division: DIST
Session Time: 06:57

Courtroom: Courtroom9

Clerk(s):
Jokela, Pam
Rohrbach, Shari

State Attorneys: Wick, Ann

Public Defender(s): Neils, Martin

Prob. Officer(s):

Court interpreter(s):

Case ID: 0001

Case Number: CR2006-18813

Plaintiff:

Plaintiff Attorney:

Defendant: BEAVERS, MARK DUANE

Pers. Attorney:

Co-Defendant(s):

State Attorney: Wick, Ann

Public Defender: Neils, Martin

Additional audio and annotations can be found in case: 0002.

06/16/2008

09:14:00

Recording Started:

09:14:00

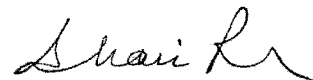
Case called

09:14:04

Judge: Hosack, Charles
CALLS CASE

09:14:07

Add Ins: JURY TRIAL



09:14:08 **State Attorney: Wick, Ann**

09:14:18 **Public Defender: Neils, Martin**

09:14:27 **Defendant: BEAVERS, MARK DUANE**
PRESENT

09:14:29 **Judge: Hosack, Charles**
PARTIES READY

09:14:38 **State Attorney: Wick, Ann**
YES

09:14:39 **Public Defender: Neils, Martin**
YES

09:14:40 **Judge: Hosack, Charles**
CLERK WILL CALL THE ROLL OF THE JURY PANEL

09:14:55 **Add Ins: CLERK**
DOES THE ROLL CALL

09:19:00 **Judge: Hosack, Charles**
INTRODUCES THE COURT STAFF - EXPLAINS THE
SELECTION OF THE JURORS -

09:25:45 THANKS ALL THE JURORS FOR THERE SERVICE - THIS
IS YOUR DUTY - CLASSIC DUTY -

09:29:26 CRIMINAL CASE - STATE IS THE PLAINTIFF'S - THEN
THE DEFENDANT AND HIS COUNSEL

09:29:50 - THE PLAINTIFF ALWAYS GO FIRTS - THEN THE
DEFENDANT HAS A CHANCE -

09:30:19 **State Attorney: Wick, Ann**
INTRODUCES SELF AND CO-COUNSEL

09:30:35 **Public Defender: Neils, Martin**
INTRODUCES SELF AND HIS CLIENT MR. BEAVERS

09:30:54 **Judge: Hosack, Charles**
EXPLAINS THE PROCESS OF WHERE THE CHARGES COME
FROM - EXPLAINS THE

09:31:23 INFORMATION DOCUMENT - STATEMENT OF CHARGES -

09:32:05 NOT EVIDENCE FOR YOU TO TAKE
BACK IN THE JURY ROOM - COUNT 1 - TRAFFICKING IN
MARJI - 8/13/06 - 25 LBS OR
09:32:38 MORE OF MARJI - COUNT 2 - TRAFFICKING IN MARJI -
07/2006 - POSSESS 25 OR MORE
09:33:07 PLANTS - COUNT 3 - POSSESSION OF CONT SUB -
MARJI - WITH INTENT TO DELIVER -
09:33:24 8/13/06 - POSSESS MARJI TO DELIVER - THOSE ARE
THE STATEMENT OF CHARGES - HE
09:33:50 HAS FILED A DOCUMENT STATING HE IS NOT GUILTY -
THE JURY IS GOING TO HAVE TO
09:34:08 DECEIDE THIS INFORMATION - HE IS PRESUMET TO
INNOCENT - THE STATE HAS TO
09:34:31 PROVE EACH CHARGE - BEYOND A REASONABLE DOUBT -
YOU ALSO GET WRITTEN
09:35:15 INSTRUCTIONS - YOU JUST APPLY THE LAW - IT IS IN
WRITING - IT WILL BE IN THE
09:35:55 JURY ROOM WITH YOU - ONCE THE EVIDENCE IS GIVEN
TO YOU -

09:36:21 **Add Ins: CLERK**
CALLS 35 NAMES

09:45:12 **Judge: Hosack, Charles**
I WILL HAVE THE CLERK SWEAR THE ENTIRE PANEL

09:46:59 **Add Ins: CLERK**
SWEARS THE ENTIRE JURY PANEL FOR VOIR DIRE

09:48:28 **Judge: Hosack, Charles**
VOIR DIRE OF THE PANEL
09:57:19 EXCUSES JUROR #28

09:57:32 **Add Ins: CLERK**
CALLS THE NAME OF ANOTHER JUROR

09:57:44 **Judge: Hosack, Charles**
CONTINUES WITH VOIR DIRE OF THE JURY PANEL
10:12:21 WE WILL TAKE A STRETCH BREAK FOR RIGHT NOW - 10
MINUTES

10:12:50 **Stop Recording**

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Court interpreter(s):

Case ID: 0002

Case Number: CR2006-18813

Plaintiff:

Plaintiff Attorney:

Defendant: BEAVERS, MARK DUANE

Pers. Attorney:

Co-Defendant(s):

State Attorney: Wick, Ann

Public Defender: Neils, Martin

Previous audio and annotations can be found in case: 0001.

Additional audio and annotations can be found in case: 0003.

06/16/2008

10:24:43

Recording Started:

10:24:43

Recall
BEAVERS, MARK DUANE

10:24:50 **Judge: Hosack, Charles**
BACK ON THE RECORD - EXCUSE #31

10:25:45 **Add Ins: CLERK**
CALLS THE NAME OF ANTOHER JUROR

10:25:53 **Judge: Hosack, Charles**
HAVE THE STATE VOIR DIRE THE JURY PANEL

10:26:31 **State Attorney: Wick, Ann**
VOIR DIRE

10:56:21 **Public Defender: Neils, Martin**
OBJECT TO THE VOIR DIRE

10:56:28 **Judge: Hosack, Charles**
WHAT THE LAW IS - FOCUS ON THE VOIR DIRE

10:56:43 **State Attorney: Wick, Ann**
CONTINUES WITH VOIR DIRE OF THE JURY PANEL

11:00:56 MOVE TO STRIKE JUROR #15 WOULD NOT BE ABLE TO
FOLLOW THE INSTRUCTION OF HTE

11:01:14 COURT

11:01:15 **Judge: Hosack, Charles**
IF THE LAWS ARE SUCH - YOU HAVE TO DETERMINE THE
FACTS OF THE CASE - THAT IS

11:01:40 THE JOB OF JURORS - DENY THE CHALLENGE FOR CAUSE

11:01:54 **Public Defender: Neils, Martin**
VOIR DIRE OF THE JURY PANEL

11:10:21 MOVE TO EXCUSE JUROR #35

11:10:30 **Judge: Hosack, Charles**
EXCUSES JUROR #35

11:11:46 **Add Ins: CLERK**
CALLS THE NAME OF ANOTHER JUROR

11:11:54 **Public Defender: Neils, Martin**
CONTINUES WITH VOIR DIRE OF THE JURY PANEL

11:12:18 MOVE TO EXCUSE JUROR #50

11:13:04 **Judge: Hosack, Charles**
EXCUSES JUROR #50

11:13:13 **Add Ins: CLERK**
 CALLS THE NAME OF ANOTHER JUROR

11:14:20 **Public Defender: Neils, Martin**
 CONTINUES WITH VOIR DIRE

11:23:53 MOVE TO EXCUSE JUROR #60

11:24:01 **Plaintiff Attorney:**
 EXCUSES JUROR #60

11:24:36 **Add Ins: CLERK**
 CLERK CALLS THE NAME OF ANOTHER JUROR

11:24:48 **Public Defender: Neils, Martin**
 CONTINUES WITH VOIR DIRE

11:26:53 MOVE TO EXCUSE JUROR #19

11:28:31 **Judge: Hosack, Charles**
 EXCUSES JUROR #19

11:29:42 **Add Ins: CLERK**
 CALLS THE NAME OF ANOTHER JUROR

11:29:49 **Public Defender: Neils, Martin**
 CONTINUES WITH VOIR DIRE

11:31:49 MOVE TO EXCUSE JUROR #57

11:32:40 **Judge: Hosack, Charles**
 EXCUSES JUROR #57

11:32:50 **Add Ins: CLERK**
 CALLS THE NAME OF ANOTHER JUROR

11:33:02 **Judge: Hosack, Charles**
 VOIR DIRE OF JUROR #57

11:34:02 **State Attorney: Wick, Ann**
 VOIR DIRE OF JUROR #21

11:34:13 **Public Defender: Neils, Martin**
 MOVE TO EXCUSE JUROR #29

11:35:19 **Judge: Hosack, Charles**
 DENY THE CHALLENGE FOR CAUSE

11:35:29 **Public Defender: Neils, Martin**

11:38:19 CONTINUES WITH VOIR DIRE
PASS THE PANEL FOR CAUSE

11:38:28 **Judge: Hosack, Charles**
EXPLAINS THE PRE-EMPTORY CHALLENGES TO THE
ENTIRE PANEL

11:40:31 WE WILL BE IN RECESS FOR PREEMPTORY CHALLENGE

11:40:46 **Stop Recording**
(Off Record)

12:06:15
Recording Started:

12:06:15 **Record**
BEAVERS, MARK DUANE

12:06:17 **Judge: Hosack, Charles**
BACK ON THE RECORD

12:06:21 ATTORNEYS HAVE EXERCISED THERE PREEMPTORY
CHALLENGES -

12:08:22 READS THE SEATING OF THE 13 JURORS

12:12:33 EXCUSES THE REST OF THE PANEL -

12:15:12 THANKS THE REMAINDER OF THE JURY PANEL FOR THERE
TIME

12:16:17 ADMISTRATIVE INSTRUCTIONS - OPENING STATEMENTS
WILL BE GIVEN AFTER LUNCH

12:16:36 **Add Ins: CLERK**
SWEARS THE JURORS FOR THE TRYING OF THE CASE

12:17:16 **Judge: Hosack, Charles**
WHEN WE BREAK FOR LUNCH - THE BAILIFF WILL SHOW
YOU WHERE THE BREAK ROOM IS

12:17:34 FOR YOU - IT IS IMPORTANT FOR YOU TO NOT SPEAK
TO ANYONE ABOUT THIS CASE

12:25:04 EXCUSES THE JURY FOR LUNCH

12:25:15 **Public Defender: Neils, Martin**
NOTHING FURTHER

12:25:18 **State Attorney: Wick, Ann**
I FILED A MOTION IN LIMINE IN FRANKS - COMMENT
ON THE COURTS PROCEDURE -

12:25:40 NOTHING TO CROSS

12:25:46 **Judge: Hosack, Charles**
GRANT THE MOTION IN LIMINE

12:26:19 **State Attorney: Wick, Ann**
4 EXHIBITS OF LARGE PET DOG FOOD - PLACE THEM
SOME WHERE BEFORE THE JURY IS

12:26:54 PRESENT - HOW TO DEAL WITH THAT?

12:27:02 **Judge: Hosack, Charles**
WE CAN OBVIOUSLY HAVE THE BAGS ON THE FLOOR AND
NOT LIFT THEM UP - PUT THEM

12:27:23 ON A CHAIR - WITH THE BACK OF THE CHAIR TO THE
JURY -

12:27:37 **Public Defender: Neils, Martin**
NO - IF THERE IS AN ISSUE - I CAN WORK THAT OUT
WITH COUNSEL -

12:28:00 **Judge: Hosack, Charles**
MAKE THEM SOMEHWAT OBSCURE

12:28:07 **Public Defender: Neils, Martin**
JUST MAKE SURE THE LARGE TUBS SET UP IN FRONT OF
THE JURY

12:28:21 **State Attorney: Wick, Ann**
I FIGURE WE WILL EXCUSE THE JURY THEN BRING THEM
IN

12:28:41 **Judge: Hosack, Charles**
I DON'T KNOW HOW BIG OR HEAVY - PROCEED IN THAT
FASHION - LET THE COURT KNOW

12:29:01 AND USE THE APPROACH TO BE BEST CAUTION -

12:29:22 **Stop Recording**
(Off Record)

13:25:44
Recording Started:

13:25:44 **Record**
BEAVERS, MARK DUANE

13:25:44 **Judge: Hosack, Charles**
BACK ON THE RECORD - PLEASE BRING IN THE JURY

13:27:41 THE JURY IS PRESENT

13:27:46 READS THE PRELIMINARY INSTRUCTONS

13:31:52 **Add Ins: CLERK**
READS THE INFORMATION

13:31:58 **Judge: Hosack, Charles**
CONTINUES READING THE PRELIMINARY INSTRUCTIONS

13:41:27 **State Attorney: Wick, Ann**
OPENING STATEMENT

13:47:19 **Public Defender: Neils, Martin**
OPENING STATEMENT

13:57:55 **State Attorney: Wick, Ann**
CALLS W#1

13:58:12 **Add Ins: CLERK**
SWEARS W#1

13:58:29 **Other: W#1 - ERIC PAULL**
EMPLOYED WITH COEUR D'ALENE POLICE DEPARTMENT -
VIOLENCE TASK FORCE -

13:58:47 **Public Defender: Neils, Martin**
OBJECT

13:58:50 **State Attorney: Wick, Ann**
IT IS HIS FOUNDATION TO HIS TESTIMONY

13:59:03 CONT WITH DIRECT OF W#1

13:59:08 **Other: W#1 - ERIC PAULL**
I HAVE BEEN A MEMBER FOR 2 YEARS WITH THE
VIOLENCE TASK FORCE - I AM A

13:59:34 GENERAL DETECTIVE - I WAS A PATROL OFFICER -
JUNE OF 1998 IS WHEN I STARTED

14:00:17 WITH THE CDA POLICE - RESERVE OFFICER - THEN
HIRED FULL TIME - I WAS A

14:00:37 MEMEBER OF THE DRUG TASK FORCE IN OCTOBER 2006 -
HAVE TO ESTABLISH WHO THE

14:01:02 PERSON IS - THERE ROUTINE - SURVEILLANCE -
TRAINING AND EXPERIENCE WITH

14:01:28 CONTROLLED SUBSTANCE - NIC - GRADUATED - WENT TO
POST - FIELD TRAINING - DEA

14:02:22 NARCOTICS - I COULD NOT PUT A NUMBER ON THAT - I
HANDLE IT AT LEAST 3 TIMES A

14:03:20 WEEK - K-9 TRAINING - I HAVE COME INTO INDOOR
GROWING PROCESS - I HAVE

14:03:46 EXPERIENCE WITH THE BUYING OF THE MARJI - I WAS
AND HAVE BEEN AN UNDER COVER

14:04:25 OFFICER

14:04:26 **Public Defender: Neils, Martin**
OBJECTION

14:04:29 **Judge: Hosack, Charles**
REPHRASE THE QUESTION

14:04:36 **State Attorney: Wick, Ann**
CONTINUES WITH DIRECT OF W#1

14:04:46 **Other: W#1 - ERIC PAULL**
POWER RECORDS - ODOR - UNUSUALLY AMOUNTS OF
POTS, GROW LIGHTS, SOIL - WINDOWS

14:05:14 ARE BLOCKED OUT - HIGH TRAFFIC FROM THE HOUSE,
SCALES, UNEXPLAINED MONEY,

14:05:32 PACKAGING - BAGGIES, SMALL BAGGIES - HAND TO
HAND - I HAVE COME INTO CONTACT

14:06:05 WITH INHOUSE GROWING OPERATION - THEY ARE
CONTROLLED BY GROW LIGHTS - I HAVE

14:06:25 HANDLED MARJI - MARJI IS UNIQUE - THE ODOR IS
THE MOST UNIQUE - LEAF PATTERN

14:06:47 IS ODD - IT HAS A BUD - I HAVE SEEN IT PROCESS
THROUGH - HASH, HONEY OIL,

14:07:22 BUDS, SEEDS, LEAVES ETC. - I DO RECALL 10/13/06
- I WAS ON DUTY THAT DATE - I

14:07:42 DID EXECUTE A SEARCH WARRANT FOR A PLACE ON 22ND
PLACE IN KOOTENAI COUNTY,

14:08:01 STATE OF IDAHO - END OF A CUL-DE-SAC - I DON'T
RECALL WHAT THE TIME OF DAY

14:08:23 WAS - IT WAS DAYTIME - DET TURNER - DET MASON -
SPECIAL AGENT JACOBSON -

14:08:49 CRYSTAL MILLER AND SEVERAL OTHER OFFICERS FROM
CDA POLICE - PL #20 - PHOTO OF

14:09:11 THE RESIDENCE - IT IS AN ACCURATE TRUE DEPICTION
OF THE RESIDENCE

14:09:28 **State Attorney: Wick, Ann**
MOVE TO ADMIT PL #20

14:09:48 **Public Defender: Neils, Martin**
NO OBJECTION

14:09:52 **Judge: Hosack, Charles**
PL #20 IS ADMITTED

14:09:57 **State Attorney: Wick, Ann**
CON'T WITH DIRECT OF W#1

14:10:05 **Other: W#1 - ERIC PAULL**
MR. BEAVERS WAS AT THE HOME THAT DAY -
IDENTIFIES HIM IN THE COURTROOM

14:10:42 SITTING AT DEFENSE TABLE - HE WAS IN THE
BACKYARD WHEN WE SHOWED UP - WE DID

14:10:58 G THROUGH THE ENTIRE RESIDENCE - SPLIT ENTRY
HOUSE - UPSTAIRS YOU COME TO THE

14:11:14 KITCHEN - LEFT SIDE OF THE STAIRS WAS THE LIVING
ROOM -

14:11:27 **Public Defender: Neils, Martin**
OBJECTION

14:11:29 **Judge: Hosack, Charles**
ALLOW

14:11:31 **State Attorney: Wick, Ann**
CON'T WITH DIRECT OF W#1

14:11:37 **Other: W#1 - ERIC PAULL**
RIGHT OF THE STAIRS IS A HALLWAY - 2 BEDROOMS -
GOING INTO THE DOWNSTAIRS -

14:12:14 BATHROOM - LARGE OPEN AREA IN THE SOUTHEAST OF -
NORTHEAST IS 2 BEDROOMS - WE DID

14:12:41 TAKE PHOTOS -

14:12:49 **Public Defender: Neils, Martin**
OBJECTION - RESPONSE -

14:13:08 **Judge: Hosack, Charles**
CLARIFY THE QUESTION

14:13:13 **State Attorney: Wick, Ann**
CON'T WITH DIRECT OF W#1

14:13:19 **Other: W#1 - ERIC PAULL**
I DID OBSERVE SUSPECTED MARJI - BASEMENT -
NORTHWEST ROOM - KITCHEN, DINING

14:13:39 ROOM, THE LARGE ROOM IN THE BASEMENT - THERE WAS
4 PLANTS IN THE ROOM - UNDER

14:14:16 2 GROW LIGHTS IN THAT ROOM - PL#46, 47, & 48 -
PICTURES OF THE ROOM - PL #46
14:15:31 - 4 PLANTS IN THE ROOM - PL #47 - 4 PLANTS,
LIGHTING AND CHEMICALS - PL #48 -
14:16:03 PLANTS WHERE THEY WERE AT

14:16:08 **State Attorney: Wick, Ann**
MOVE TO ADMIT PL #46 - 48

14:16:21 **Public Defender: Neils, Martin**
NO OBJECTION

14:16:27 **Judge: Hosack, Charles**
PL#46 - 48 ADMITTED

14:16:36 **State Attorney: Wick, Ann**
CON'T WITH DIRECT OF W#1

14:16:44 **Other: W#1 - ERIC PAULL**
WE DID COLLECT THE PLANTS, ELECTRICAL TIMER,
GROW LIGHTS, AND GREEN STUFF
14:17:29 DRYING - IN THE KITCHEN - FEW BAGGIES - LARGE -
GLASS CANNING JARS IN THE
14:17:52 CUPBOARDS - I THINK THEY WERE QUART SIZE OR
SMALLER - THERE WAS SOME HAND
14:18:43 WRITTEN LABELS ON TEH JAR - I DID READ IT - BUD
SHAKE - IF I COULD REVIEW MY
14:19:07 REPORT - I WROTE THE REPORT SHORTLY AFTER TEH
ARREST - NORTHERN VISION -
14:20:24 BROUGHT TO YOU BY THE BUD SHOP WAS ANOTHER LABEL
- 2 DIGITAL SCALES IN THE
14:20:44 KITCHEN -

14:20:51 **Public Defender: Neils, Martin**
OBJECTION - MOTION TO STRIKE

14:20:58 **Judge: Hosack, Charles**
REPHRASE THE QUESTION

14:21:07 **State Attorney: Wick, Ann**
CON'T WITH CROSS EXAMINATION OF W#1

14:21:08 **General:**
Time stamp

14:21:27 **Other: W#1 - ERIC PAULL**

THE SCALE IS USED TO WEIGH THE MARJI - TO SELL
IT

14:21:44 **Public Defender: Neils, Martin**
OBJECTION - HE IS NOT AN EXPERT WITNESS

14:22:06 **Judge: Hosack, Charles**
I WILL LET IT STAND - BASED ON LIMITING
INSTRUCTIONS - PERSONAL OBSERVATION -
14:22:20 WHAT IN FACT THEY ARE BEING USED FOR

14:22:28 **State Attorney: Wick, Ann**
CON'T WITH DIRECT OF W#1

14:22:39 **Other: W#1 - ERIC PAULL**
PL#32 - THREE JARS & 2 BAGS WITH MARJI - PL#33 -
SCALE - PL #34 -WHERE THE
14:23:32 ITEMS WHERE REMOVED FROM - PL#35 - PICTURE OF
HTE CABINET - PL #36 - GREEN
14:23:53 LEAFY SUBSTANCE

14:23:57 **State Attorney: Wick, Ann**
MOVE TO ADMIT PL #32 - 36

14:24:08 **Public Defender: Neils, Martin**
NO OBJECTION

14:24:12 **Judge: Hosack, Charles**
PL #32 - #36 ARE ADMITTED

14:24:20 **State Attorney: Wick, Ann**
CON'T WITH DIRECT OF W#1

14:24:27 **Other: W#1 - ERIC PAULL**
I WALKED THROUGH THE LIVING ROOM - I DID NOT
SEARCH IT - PL#81 - PICTURE OF
14:25:01 TE LIVING ROOM

14:25:05 **State Attorney: Wick, Ann**
MOVE OT ADMKIT

14:25:10 **Public Defender: Neils, Martin**
NO OBJECTION

14:25:13 **Judge: Hosack, Charles**
PL #81 ADMITTED

14:25:19 **State Attorney: Wick, Ann**
CON'T WITH DIRECT OF W#1

14:25:26 **Other: W#1 - ERIC PAULL**
NO, I DID NOT RECOVERY ANYTHING FROJM THE LIVING
ROOM - I DID NOT RECOVER

14:25:46 ANYTING FROM THE UPSTAIRS BEDROOM - THERE WAS A
BEDROOM FOR SLEEPING - THE

14:26:06 OTHER ROOM NO ONE WAS SLEEPING IN IT - THERE WAS
A SMALL MATTRESS ON THE

14:26:22 FLOOR WITH BLANKET AND PILLOW - THAT APPEARED TO
BE WHERE MR. BEAVERS HAD

14:26:37 BEEN SLEEPING - PL #82 - I DO RECOGINZE IT -
BACK BEDROOM -

14:27:02 **State Attorney: Wick, Ann**
MOVE TO ADMIT

14:27:05 **Public Defender: Neils, Martin**
NO OBJECTION

14:27:08 **Judge: Hosack, Charles**
PL #82 - ADMITTED

14:27:15 **State Attorney: Wick, Ann**
CON'T WITH DIRECT OF W#1

14:27:31 **Other: W#1 - ERIC PAULL**
IN THE DINING ROOM - COOLER THAT CONTAINED HASH
IN IT - WE ULTIMATELY

14:27:55 RECOVERED THAT - I DID GO THROUGH THE DOWNSTAIRS
BEDROOM - LARGE RUBBERMAID

14:28:12 TOTE WITH BAGGIES - THEY WERE LABELED -
DIFFERENT TYPES OF MARJI ON THE

14:28:30 LABELS - POW - LONG AND BEUTIFUL - NORTHER
VISION - BLUEBERRY -

14:29:47 PL #21 & #22 - I DO RECOGNIZE THE SOUTH ROOM -
TRUE AND ACURATE

14:30:14 **State Attorney: Wick, Ann**
MOVE TO ADMIT

14:30:17 **Public Defender: Neils, Martin**
NO OBJECTION

14:30:19 **Judge: Hosack, Charles**

PL #21 & #22 ADMITTED

14:30:38 **State Attorney: Wick, Ann**
CONT WITH DIRECT OF W#1

14:30:45 **Other: W#1 - ERIC PAULL**
SEVERAL JARS OF MARJI - I COLLECTED SOME OF IT -
OTHER DETECTIVE COLLECTED -

14:31:08 I COLLECTED FROM TEH KITCHEN -

14:31:23 **Public Defender: Neils, Martin**
OBJECTION - FOUNDATION

14:31:28 **Judge: Hosack, Charles**
OVERRULE

14:31:31 **State Attorney: Wick, Ann**
CONT WITH DIRECT OF W#1

14:31:37 **Other: W#1 - ERIC PAULL**
LIST THE OFFICERS AND THE ROOMS THAT THEY
COLLECTED FROM

14:32:02 SPECIAL AGENT JACOBSON LOOK IN HALL CLOSETS
UPSTAIRS AND DOWNSTAIRS AND ALSO

14:32:23 IN THE BATHROOMS - I COLLECTED THINGS FROM TEH
KITCHEN - THEY WERE PUT INTO

14:32:47 BROWN PAPER BAGS - LABELED AND PHOTOGRAPHED -
FROM TEH DOWNSTAIRS - I

14:33:13 COLLECTED FROM TEH MAIN ROOM - PHOTOGRAPHED -
PUT INTO BAGS AND LABELED WHAT

14:33:36 ROM IT CAME FROM - I DID COLLECT THE SCALES
FROM TEH KITCHEN - 357 HANDGUN

14:33:55 AMMO - GLASS PIPES - LARGE BALACES THAT WERE
STILL CONNECTED TO THE GROW

14:34:22 LIGHTS - I DID OBSERVE DET TURNER REMOVE ITEMS -
TOOK PICTURES AS HE PULLED

14:34:53 TH MARJI FROM TEH POT OT GET THE ROOT STRUCTURE
- DETECTIVE MASON I DID SEE

14:35:14 HM COLLECT ITEMS - NW BEDROOM, DINING AND LIVING
ROOM - UPSTAIRS BEDROOM HE

14:35:41 COLLECTED JARS WITH MARJI IN IT - I DO BELIEVE
THAT THERE WAS A BAG WITH

14:35:56 MARJI IN IT - TOTE UNDERNEATH A TABLE - I LOOKED
INSIDE THE TOTE - BUNCH OF

14:36:15 GREEN LEAFY SUBSTANCE - I DON'T RECALL SPECIAL
AGENT JACOBSON REMOVE ANYTHING

14:36:37 - DET TURNER AND MASON'S ITEMS WERE TAKEN INTO
EVIDENCE THEN TAKEN TO HTE
14:36:58 POLIE DEPARTMENT - I DID GO THROUGH THE BACKYARD
- LARGE WATER TANK - LOTS OF
14:37:21 POTS - QUONSON HUT AND 2 GREEN HOUSES - I DID
LOOK INSIDE THE GREEN HOUSE -
14:37:52 MARJI PLANTS IN THE GREEN HOUSE - YES OTHER LAW
ENFORCEMENT OFFICER WENT
14:38:18 OUTSIDE IN THE BACK YARD WITH ME - PL#49 - 57 -
I DO RECOGINZE THOSE PHOTOS -
14:41:18 THEY ARE PICTURES THAT WERE TAKEN IN BACKYARD
THAT DAY - PL#49 - MARJI PULLED
14:42:06 OUT OF THE GREENHOUSE - PL#50 - INSIDE ONE OF
THE GREENHOUSE - PL#51 - INSIDE
14:42:27 THE OTHER GREENHOUSE - PL#52 - PICTURE FROM THE
OUTSIDE LOOKING INTO THE
14:42:46 GREENHOUSE - PL #53 - PICTURE OF THE SIDE OF THE
HOUSE LOOKING INTO BACKYARD
14:43:28 - PL #54 - LOOKING OUT OF THE GREENHOUSE - PL#55
- SPECIAL AGENT JACOBSON
14:43:51 PULLING HTE PLANTS FROM THE POTS - PL #56 -
LOOKING INTO THE GREENHOUSE -
14:44:12 LIGHTS, FILTER, ETC - PL #57 - PICTURE INSIDE
THE GREENHOUSE

14:44:29 **State Attorney: Wick, Ann**
MOVE TO ADMIT PL #49 - #57

14:44:37 **Public Defender: Neils, Martin**
NO OBJECTION

14:44:43 **Judge: Hosack, Charles**
PL #49 - 57 ADMITTED

14:45:08 RECESS FOR 5 - 10 MINUTES

14:45:25 **Stop Recording**
(Off Record)

14:45:47
Recording Started:

14:45:47 **Record**
BEAVERS, MARK DUANE

14:45:54 **Stop Recording**
(Off Record)

15:01:44 Recording Started:

15:01:44 **Record**
BEAVERS, MARK DUANE

15:01:44 **Judge: Hosack, Charles**
BACK ON THE RECORD

15:01:50 BRING IN THE JURY

15:03:00 THE JURY IS BACK IN PLACE

15:03:07 **State Attorney: Wick, Ann**
CONTINUES WITH DIRECT OF W#1

15:03:18 **Other: W#1 - ERIC PAULL**
47 PLANTS IN TOTAL WE COLLECTED - PL#65 - #77 -
I DO REQCIGINZE THOSE

15:09:52 EXHIBITS - PHOTOS IN THE POLICE DEPARTMENT OF
THE DRYING OF THE PLANTS - PL

15:10:37 #65 - PICTURE IN DRYING CLOSET - PL #66 - MORE
PLANTS UNDERNEATH - PL #67 -

15:10:57 MORE PLANTS HANGING IN THE DRYING ROOM - PL #68
- PLANTS IN DRYING ROOM - PL

15:11:22 #69 - FIVE PLANTS LAYING ON BUTHER PAPER - 1 - 5
- PL #70 - PLANTS 6 - 10 -

15:12:15 PL#71 - PLANTS 11 - 15 - PL #72 - PLANTS 16 - 20
- PL#73 - PLANTS 21 - 25 -

15:12:51 PL#74 - 26 - 30 - PL #75 - 31 - 35 - PL #76 -
PLANTS 36 - 40 - PL #77 - 41,

15:13:52 42, 43 & 44 -

15:13:57 **State Attorney: Wick, Ann**
MOVE TO ADMIT PL #65 - 77

15:14:06 **Public Defender: Neils, Martin**
NO OBJECTION

15:14:09 **Judge: Hosack, Charles**
PL #65 - #77 ADMITTED

15:14:20 **State Attorney: Wick, Ann**
CON'T WITH DIRECT OF W#1

15:14:31 **Other: W#1 - ERIC PAULL**
EXPLAINS THE PROCESS OF SEALING UP THE EVIDENCE
- IT WAS WEIGHED AND SHIPPED

15:16:21 TO THE STATE LAB - PL #58 - 63 - PHOTOS OF THE
SUSPECTED MARJI AND ITEMS
15:20:14 TAKEN FROM THE RESIDENCE - PL #58 - LARGE
TUPPERWARE TOTE - FROM THE LIVING
15:20:34 ROOM - BAGS OF WHAT COULD BE OF MARJI - SUPER 1
BAGS SITTING THERE - DRYING
15:20:52 MARJI IN THEM

15:20:56 **Public Defender: Neils, Martin**
ORDER TO SHOW CAUSEBJEC

15:20:58 **Judge: Hosack, Charles**
OVERRIDE

15:21:00 **State Attorney: Wick, Ann**
CONT WITH DIRECT OF W#1

15:21:07 **Other: W#1 - ERIC PAULL**
TURE AND ACCURATE DEPTICTION - PL #59 - CLOSE UP
PICUTRE OF ZIPLOCK BAGGIE -
15:21:30 PL #60 - PICTURE OF JARS WITH SUSPECTED MARJI IN
THEM - PL #61 - CLOSER UP
15:21:49 PICTURE OF THE JARS (3) - SUSPECTED MARJI - WITH
LABELS - PL#62 - THREE JARS
15:22:08 CLOSE UP - PL #63 - PICTURE OF CONTENT AND WHAT
WAS INSIDE THE JARS -

15:22:29 **State Attorney: Wick, Ann**
MOVE TO ADMIT PL #58 - 63

15:22:38 **Public Defender: Neils, Martin**
NO OBJECTON

15:22:41 **Judge: Hosack, Charles**
PL #58 - #63 ADMITTED

15:22:53 **State Attorney: Wick, Ann**
CON'T WITH DIRECT OF W#1

15:23:31 **Other: W#1 - ERIC PAULL**
PL #1 - 4 - I AM FAMILIAR WITH IT - ONE OF THE
FOUR LARGE BAGS THAT I PACKED
15:26:45 AND SENT TO THE LAB - GREEN LEAFY SUBSTANCE HAS
BEEN BROKEN UP - SECOND BAG
15:27:04 PLACED OBER IT FOR COURT PURPOSES - SAME BAG I
PLACED IT IN - IT IS SEALED -

15:27:26 ISEALED IT WITH EVIDENCE TAPE - THERE ARE OTHER
- PL #2 - I DO RECOGNIZE IT -
15:27:58 IT IS ONE OF THE BAGS THAT WAS PACKAGED AND SENT
TO THE LAB - EXPLAINS THE
15:30:36 CHAIN OF CUSTODY -

15:36:52 **Public Defender: Neils, Martin**
OBJECTION - ASK A QUESTION

15:37:01 **Other: W#1 - ERIC PAULL**
SGT TURNER DID GATHER THE OTHER PLANT MATERIAL -
I DON'T KNOW IF I WAS IN TH
15:37:21 E ROOM - I WAS AT THE HOME - TRANSPORTED TO THE
POLICE DEPARTMENT - I COULD
15:37:40 NOT HONESTLY SAY WHO TRANSPORTED IT -

15:37:51 **Public Defender: Neils, Martin**
RENEW THE OBJECTION

15:38:02 **Judge: Hosack, Charles**
REPHRASE THE QUESTION

15:38:09 **State Attorney: Wick, Ann**
CON'T WITH DIRECT OF W#1

15:38:21 **Other: W#1 - ERIC PAULL**
IT WAS LAYING OUT WITH A WHITISH/PINK SUBSTANCE
ON IT - SUPER 1 BAG - LOOSLY
15:38:44 TROWN INTO THE BAG - PL #110 - PICTURE OF PLANT
MATERIAL

15:41:00 **State Attorney: Wick, Ann**
MOVE TO ADMIT PL #110

15:41:05 **Public Defender: Neils, Martin**
NO OBJECTION

15:41:08 **Judge: Hosack, Charles**
PL #110 - ADMITTED

15:41:13 **State Attorney: Wick, Ann**
CON'T WITH DIRECT OF W#1

15:41:14 **General:**
Time stamp

15:41:25 **Other: W#1 - ERIC PAULL**
THERE WAS NO OTHER ROOM IN THE HOUSE WITH A BED
OR SLEEPING AREA - THERE WAS

15:41:41 MORTGAGE PAPERWORK FOR THE RESIDENCE - PL #29 -
31 - TRUE AND ACCURATE -

15:48:54 **State Attorney: Wick, Ann**
MOVE TO ADMIT PL #29 - 31

15:49:10 **Public Defender: Neils, Martin**
NO OBJECTION

15:49:15 **Judge: Hosack, Charles**
PL #29 - 31 ADMITTED

15:49:22 **State Attorney: Wick, Ann**
CON'T WITH DIRECT OF W#1

15:49:43 **Other: W#1 - ERIC PAULL**
PL #100 - 107 - LITERATURE THAT WE COLLECTED IN
THE HOME

15:50:59 **State Attorney: Wick, Ann**
MOVE TO ADMIT TO THE PL #100 - 107

15:51:11 **Public Defender: Neils, Martin**
I DO OBJECT - HEARSAY AS TO WHAT IS INSIDE THE
BOOK -

15:51:38 **Judge: Hosack, Charles**
WE CAN ADMIT THEM - SIMPLY FOR THE COVERS OR
CONTENTS WILL REQUIRE SOME

15:51:58 DISCUSSION - PL #100 - 107 ADMITTED

15:52:39 WE WILL TAKE OUR EVENING RECESS - 9 - 2 THE REST
OF THE WEEK -

15:53:03 NO TALKING ABOUT HIS CASE - JURY IS RELEASED FOR
THE EVENING

15:57:00 OFFER EXHIBITS 80 - AS TO WHAT GOES TO THE JURY
- EXHIBIT 80 WILL GO INSTEAD

15:57:17 OF EXHIBITS 10 - 107 - ADMIT PL #80 -

15:57:52 **Stop Recording**

Court Minutes:

Session: HOSACK061608A
Session Date: 06/16/2008
Judge: Hosack, Charles
Reporter: Schaller, Joann

Division: DIST
Session Time: 06:57

Courtroom: Courtroom9

Clerk(s):
Jokela, Pam
Rohrbach, Shari

State Attorneys: Wick, Ann

Public Defender(s): Neils, Martin

Prob. Officer(s):

Court interpreter(s):

Case ID: 0003

Case Number: CR2006-18813

Plaintiff:

Plaintiff Attorney:

Defendant: BEAVERS, MARK DUANE

Pers. Attorney:

Co-Defendant(s):

State Attorney: Wick, Ann

Public Defender: Neils, Martin

Previous audio and annotations can be found in case: 0002.

Additional audio and annotations can be found in case: 0004.

06/17/2008

09:08:15

Recording Started:

09:08:15

Recall
BEAVERS, MARK DUANE

09:09:44 **Judge: Hosack, Charles**
Calls, def and parties present, ready to
continue with jury trial.

09:10:07 **Public Defender: Neils, Martin**
I didn't bring this up yesterday, but move to
exclude witnesses.

09:10:11 **State Attorney: Wick, Ann**
No obj, except for Det. Paull.

09:10:12 **Judge: Hosack, Charles**
Will exclude witnesses. Bring jury in.

09:11:43 **State Attorney: Wick, Ann**
Call Eric Paull back to the stand.

09:12:00 **Other: Paull, Eric**

09:12:03 **Judge: Hosack, Charles**
You are still under oath from yesterday.

09:12:13 **Other: Paull, Eric**
There was plant material left in the home, in an
upstairs closet. The

09:13:21 material from the screen was collected. We left
material that was not marij,

09:13:43 you could tell by the smell it was not marij.

09:14:05 **Other: Paull, Det Eric**
Exh 111, is the material off of the screen. This
is not consistant with marij

09:14:39 so it was not packaged with the marij. Exh 26,
photo of inside of cooler,

09:16:57 baggies and scale. There were names inside the
bags, labeling the marij.

09:18:27 **State Attorney: Wick, Ann**
Move to admit 111 and 26.

09:18:34 **Public Defender: Neils, Martin**
Ask question?

09:18:40 **Judge: Hosack, Charles**
Yes.

09:19:24 **Other: Paull, Det Eric**
I can't say who took the photograph, we were all taking photographs. Det

09:19:51 Mason processed this room. I was back and forth in several of the rooms. Det

09:20:35 Turner removed items from the screen, I was in and out of the rooms. There

09:21:01 were several cars used to transport items.

09:21:18 **Public Defender: Neils, Martin**
Obj, lack of foundation on chain of custody and who takes pictures.

09:21:48 **State Attorney: Wick, Ann**
The person taking the photograph is not required to lay foundation, just that

09:22:09 it looks like the scene, argues.

09:23:03 **Judge: Hosack, Charles**
Sustain at this point for Exh 111.

09:23:18 **State Attorney: Wick, Ann**
Continues with direct

09:23:48 **Other: Paull, Det Eric**
Exh 111 the heat seal has my marking, describes. I packaged this for court

09:24:21 today. It appears to be the same material as on the screen.

09:25:57 **State Attorney: Wick, Ann**
Renew motion to admit.

09:25:58 **Judge: Hosack, Charles**
O/R obj and admit 26 and 111.

09:27:13 **Other: Paull, Det Eric**
Exh 5 are items from the dining room area. I packaged them for court today.

09:28:54 Exh 25 is a photo of the tub with container.

09:29:31 **State Attorney: Wick, Ann**
Move to admit 5 and 25.

09:29:31 **Public Defender: Neils, Martin**
No obj.

09:29:33 **Judge: Hosack, Charles**
Admit 25 and 5.

09:29:57 **Other: Paull, Det Eric**
I've seen that kind of packaging before with
drugs. Exh 7 is a Mark

09:31:44 Henry catalog from def house.

09:32:26 **State Attorney: Wick, Ann**
Move to admit 7.

09:32:32 **Public Defender: Neils, Martin**
Obj, cumulative and prejudicial.

09:32:43 **Judge: Hosack, Charles**
I haven't seen the document - will reserve and
review at a break.

09:33:08 **Other: Paull, Det Eric**
Exh 11 is envelope of seed container, I saw this
on Aug 13 in the house.

09:34:39 **Judge: Hosack, Charles**
Admit 11.

09:35:03 **Other: Paull, Det Eric**
Exh 6 and 19 are a menu and a recipe with
numbers written next to it. I saw

09:36:54 them at the house.

09:36:57 **Judge: Hosack, Charles**
Admit 6 and 19.

09:37:43 **Other: Paull, Det Eric**
Exh 18 is two pieces of paper from the briefcase
with different names of

09:38:35 marij and different prices.

09:38:51 **Judge: Hosack, Charles**
Admit 18.

09:39:06 **Other: Paull, Det Eric**

09:41:55 **Public Defender: Neils, Martin**
Would like to make an obj outside the presence

of the jury.

09:42:37 **Judge: Hosack, Charles**
Excuse jury.

09:42:47 **Public Defender: Neils, Martin**
Obj based on 404b, the exh except for #17 appear
for a manufacturing which
09:43:25 is not charged in this case. No notice from the
state regarding 404 evidence.
09:43:47 Exh 10 appears to reference different types of
marij, and a record of
09:44:43 harvesting. No indication it has indication it
has connection to the plants
09:45:05 on the premissis, Exh 12-15, Exh 16 appears to
be a record of hash which is
09:45:52 not charged in this case. No obj to 17.

09:46:08 **State Attorney: Wick, Ann**
These are business records and one charge is
intent to deliver. There will be
09:47:18 no reference to prior plants. They pertain to
marij in the house. They're not
09:47:57 prior conduct records. Not a 404 reference.

09:48:11 **Judge: Hosack, Charles**
What was the reference to hash?
09:48:42 Reviews exh 16 a-i.

09:50:20 **Public Defender: Neils, Martin**
Questions witness.

09:50:23 **Other: Paull, Det Eric**
Exh 16 are data cards that show bubble batch, he
had recipes for bubble hash
09:50:51 in the house. It has quantities shown.

09:53:57 **Public Defender: Neils, Martin**
Withdraw obj as to 12-15, and 10. Continue obj
as to #16.

09:55:52 **Judge: Hosack, Charles**
Which statute controls hash?
10:01:10 Will admit exh, I didn't see any reference to
the term hash, I will enter an
10:01:32 order in limine to not make a reference to hash.

10:02:20 With that limitation we will
16 a-i. Reviews seed catalog, exh 7, o/r obj to
#7. Will take a break now.

10:03:36 **Stop Recording**
(On Recess)

10:10:38
Recording Started:

10:10:38 **Record**
BEAVERS, MARK DUANE

10:10:41 **Judge: Hosack, Charles**
Back in session, bring in the jury.

10:11:54 Jury is present.

10:12:06 **Other: Paull, Det Eric**
Exh 10-17, describes. They are cards and
paperwork removed from def house.

10:13:22 Appear to be data cards, shows weights, bud
shape, describes.

10:15:10 **State Attorney: Wick, Ann**
Move to admit 10-17

10:15:15 **Public Defender: Neils, Martin**
Obj has already been made to the court.

10:15:24 **Judge: Hosack, Charles**
Admit 10-17.

10:16:27 **Other: Paull, Det Eric**
I'm aware of how marij is ingested through the
course of my training. There

10:16:59 were pipes in def's kitchen, those were not used
for marij. There was a small

10:17:30 glass pipe in his bedroom, to hold a 1/16 to
1/25 gram in the pipe. Exh 37, p

10:19:59 **Public Defender: Neils, Martin**
No obj

10:20:01 **Judge: Hosack, Charles**
Admit 37

10:20:50 **Other: Paull, Det Eric**
There were scales in the residence which can be
used for marij. Exh 64, photo
10:21:25 of scales taken at the PD.

10:21:32 **State Attorney: Wick, Ann**
Move to admit.

10:21:34 **Public Defender: Neils, Martin**
No obj.

10:21:37 **Judge: Hosack, Charles**
Admit 64.

10:22:14 **Other: Paull, Det Eric**
There was a plant in the greenhouse that stood
out to me. Exh 50 is a
10:23:35 different plant. It was not collected for
processing.

10:27:01 Exh 45 is a photo of a tote containing marij. I
observed it on Aug 13 at the
10:27:19 house. It was sent to the lab.

10:27:53 **State Attorney: Wick, Ann**
Move to admit.

10:27:57 **Public Defender: Neils, Martin**
Question witness.

10:28:03 **Other: Paull, Det Eric**
I observed the material on the date of the
search. I don't know which Det
10:28:29 transported. I don't believe I took it out of
the tote.

10:28:48 **Public Defender: Neils, Martin**
No obj.

10:28:51 **Judge: Hosack, Charles**
Admit 45

10:30:40 **Public Defender: Neils, Martin**
CROSS

10:32:35 **Other: Paull, Det Eric**
I was the case officer. Det Mason, Turner,

Jacobson and myself walked
10:33:19 through the entire residence. I saw marij in the
downstairs roms, kitchen,
10:33:59 dining, living and upstairs bedroom. I prepared
part of the police report
10:35:33 before the search, some after, on the 13 and the
17th of Aug 06. There was an
10:36:08 inventory done at the house. Everybody did that,
what was taken as they
10:36:27 prepared it. That inventory was submitted to the
Court. I did not see Sgt
10:38:45 Turner collect some materials from downstairs
bedroom. I removed the stuff in
10:40:36 the downstairs bedroom. I processed the kitchen.
The marij was removed. It
10:41:45 went into one of the detectives car. I didn't
personally transport
10:42:08 material to the police station. I opened canning
jars at the residence, I
10:43:02 don't recall them being pressured sealed. There
was food and herbs in the
10:44:38 kitchen. There were herbs in jars like the
marij. Some of the herbs were
10:45:23 labeled. Some of the marij jars were labeled.
Some material was taken out to
10:46:20 examine and put back. Det Mason processed the
living room. I saw material set
10:47:37 aside to be removed from the house. Mason
processed the dining room. Upstairs
10:48:07 bedroom processed by Det Mason. I did not see
him remove items. I provided
10:49:51 all photos to the prosecution. I took photos of
items that had evidentiary
10:50:35 value. Mason, Turner and myself carried items in
to the police station. The
10:51:37 drying room is part of the processing area. Once
the door is shut you would
10:52:02 have to get the key from the evidence person.
Everything recovered from the
10:52:39 residence should be on the inventory list. The
bud is the flowering portion,
10:56:00 shake is anything loose, anything that has
fallen off of the plant. There is
10:57:47 dffferent potency of the plant. Generally buds
have the most potency. Shake
10:58:29 would be less potent than the bud. Exh 21 and 45

are totes from the house.
11:04:07 Describes exh 35, shows a jar that is not full.
In the photo I cannot tell if
11:04:43 it is marij. Exh 1, large bag of marij., bagged
on 8-15-06. I cannot tell if
11:06:10 it came from a particular room. Same with exh
2,3, and 4. It was suspected to
11:08:37 be marij and sent to the lab to be confirmed.
There is a lot that you cannot
11:09:01 tell is marij. On Aug 15 everything believed to
be marij was placed into the
11:10:55 four large bags. I reviewed my testimony from
the PH, I don't believe there
11:13:21 was marij on the drying screening. I did testify
to that at the PH. It was
11:13:49 listed as marij in police reports. 45 plants was
the rough count on teh
11:16:57 scene, then later it was 49, then 44 plants. The
count on the scene was a
11:17:38 rough estimate. The count was a mistake.
Everyone on scene were pulling
11:18:59 plants out of the greenhouse. FBI, and patrol
officers were present. Patrol
11:19:17 did not participate removing plants from
greenhouse. Plants were uprooted.
11:19:47 Uprooted plants were laid out and photographed,
loaded and taken to police
11:20:32 dept. I personally did not transport plants to
the police station.

11:20:56 **Public Defender: Neils, Martin**
Request 5 min recess.

11:21:05 **Judge: Hosack, Charles**
Will take recess, excuse jury.

11:21:54 **Stop Recording**
(On Recess)

11:42:59
Recording Started:

11:42:59 **Record**
BEAVERS, MARK DUANE

11:43:04 **Judge: Hosack, Charles**

Back in session, bring jury in.

11:44:15 **Public Defender: Neils, Martin**
Continues with cross.

11:44:25 **Other: Paull, Det Eric**
There were books there that had to do with
raising marijuana. One book is

11:45:24 titled Sell marij Legally. I did not go through
the books. There were books

11:46:00 on cooking marij. I did not take photographs of
all the books in the

11:46:30 residence. House had been under surveillance,
monitoring. I never checked the

11:52:46 garbage. there was no evidence of anybody else
living there. There were other

11:54:02 plants growing in the back, I don't know what
they were. There were material

11:55:32 that I was not sure if it was marij. The items I
was looking at gave off the

11:57:45 smell of marij.

11:58:48 **State Attorney: Wick, Ann**
REDIRECT

11:58:52 **Other: Paull, Det Eric**
There were herbs in the kitchen, some were
labeled. Whatever was not marij

11:59:10 was not collected, from the kitchen. We take
pictures to show the whole room.

11:59:45 We take pictures of the whole house. You could
see leaf structure in the

12:00:51 broken up material. I was looking for the
presence of marij. In exh 1-4 you

12:02:26 can still find leaf structure in the bags. I did
not review evidence before

12:03:22 the PH. I went thorough the evidence again to
prepare for trial. Aug 13 was a

12:04:52 Sunday and we were on overtime. At a later date
I packaged everything. The

12:09:08 surveillance was never a 24-hour surveillance.
Nothing went into the bag that

12:09:59 was not consistant with marij.

12:10:08 **Public Defender: Neils, Martin**
RECROSS

12:10:12 **Other: Paull, Det Eric**
There are pictures taken of items. I didn't take pictures of jars of herbs,

12:11:10 the closet was full of them. I didn't take pictures of other reading material.

12:11:30

12:15:38 **State Attorney: Wick, Ann**
Call Det Turner

12:15:54 **Other: Turner, Det Robert**
Sworn by clerk. I work for CDA since 1992. I work narcotics, explains duties,

12:17:54 education. I took part of a search warrant in CDA. I went to the north side

12:19:45 and saw def. ID def at table, he was in the back yard when we executed the

12:20:07 search warrant. Then I assisted inside the residence. I took photos, then I

12:20:41 helped with evidence. I was able to identify marij based on my training and

12:23:34 experience. There was plant material drying on a screen. I collected it. I

12:24:25 don't recall if I carried it outside. I packaged it. I pulled plants from the

12:26:48 greenhouse and transported plants. Reviews exh. Everything was turned over to

12:30:50 Det Paull.

12:30:55 **Public Defender: Neils, Martin**
CROSS

12:31:03 **Other: Turner, Det Robert**
I observed 4 plants in the basement. Also a screen that I collected the

12:32:14 material off of. I have not reexamined the material. Some material was not

12:33:49 marij, Det Paull told me. There were two greenhouses in the back, there was a

12:34:31 garden. I did not look in the greenhouses after the marij was removed. I

12:35:56 don't recall placing material in the van. I recall placing material in the

12:36:11 pick-up. With dried leaf you have to look closely. I did the presearch

12:37:39 photos. I don't know if patrol officers were

12:39:24 involved. I picked up the material from the screen and placed it in the bag.

12:39:37 **State Attorney: Wick, Ann**
REDIRECT

12:39:42 **Other: Turner, Det Robert**
I did a rough count of marij plants in the greenhouses, 30 in one and 11 in the other greenhouse.

12:40:03

12:40:39 **State Attorney: Wick, Ann**
Call John Mason

12:40:56 **Other: Mason, John**
Swears witness. I'm employed with Post Falls, and violent crimes task force.

12:41:44 I started with Post Falls in 1999. Explains duties, experience, and training.

12:43:01 On duty on 8-13-06 to execute a search warrant in CDA. I assisted with

12:45:08 securin of house and then processing. I did the living room-kitchen area and

12:45:28 a back bedroom.

12:45:51 **Public Defender: Neils, Martin**
Obj

12:45:53 **Judge: Hosack, Charles**
O/R, limiting instruction as to an observation

12:46:10 **Other: Mason, John**
I recovered pipes, marij growing books, jars with plant material. Exh 39-44

12:48:55 are pictures from the house. Shows plant material, describes.

12:51:23 **State Attorney: Wick, Ann**
Move to admit 39-44.

12:51:29 **Public Defender: Neils, Martin**
No obj.

12:51:31 **Judge: Hosack, Charles**
Admit 39-44

12:51:42 **Other: Mason, John**
To identify marij look at plant, smell. I took
other things from the
12:54:36 residence, cash, ledger. Transported to police
locker. I drove the van. I
12:58:23 don't recall handling anything that was not
marij.

12:58:38 **Public Defender: Neils, Martin**
CROSS

12:58:40 **Other: Mason, John**
I'm Post Falls police with state and federal
powers. Reviews photos, I tested
13:01:23 budding material. I can't pronounce the full
name for THC. Shake would
13:02:11 probably be less potent.

13:04:34 **Judge: Hosack, Charles**
Will take a short break, recess.

13:05:05 **Stop Recording**
(On Recess)

13:17:32
Recording Started:

13:17:32 **Record**
BEAVERS, MARK DUANE

13:18:39 **Judge: Hosack, Charles**
Back in session, bring jury in.

13:19:46 **State Attorney: Wick, Ann**
Call Anne Nord

13:20:08 **Other: Nord, Ann**
Sworn by clerk. Employed at Idaho Lab, as
manager. I've been with ISP about
13:20:45 10 years. Gives training and education.
13:25:00 Gives procedure for chain of custody and
security within the lab. Explains
13:26:16 analysis procedure.
13:29:17 I recognize exh 1-4 barcodes, my initials on
some of the seals and dates. I
13:30:11 analyzed them on 9-28-06. I weighed the plant

13:31:50 material. I checked exh 1 out
from the evidence specialist. The balance is
certified annually, we check
13:32:14 it each month, explains. Exh 1 I did in one
amount. The package was sealed
13:33:29 with evidence tape. Weight was

13:34:29 **Public Defender: Neils, Martin**
Obj.

13:34:53 **Judge: Hosack, Charles**
Ask the question as if she needs to refresh her
recollection.

13:35:08 **Other: Nord, Ann**
Weight was 1645 grams. 453.5 grams in a pound.
Exh 2: I weighed the plant
13:36:29 material in two separate weighings. 1556 and 2010
total 3566 grams.
13:37:35 Exh 3: I weighed it in three weighings. Weights
were: 2443, 785, 904, total
13:38:30 total: 4132 grams. Bags were all sealed with
initials. Exh 3: total wt: 2235
13:39:54 grams and I did that in one weighing. The exh
with three weighings was court
13:40:15 exhibit #4. Total weight for all four bags was:
11578 gram, or 25.525 pounds.
13:42:02 I'm familiar that plants can retain water but
I'm not an expert. As a plant
13:42:36 dries out the water goes away, depends on
humidity. When I was done with each
13:43:36 I placed it back in the bag and sealed it. I did
the weighing after D.
13:44:08 Sincerbeaux after he did the analysis. Plant
material was received by the lab
13:44:48 on 8-15-06. I did not note the odor, that's not
an observation I note. Lab is
13:46:03 certified, ASCLD under 17-025. Marij is
generally green plant material. We
13:47:32 look for hairs on the leaves.

13:47:59 **Public Defender: Neils, Martin**
CROSS

13:48:03 **Other: Nord, Ann**
I use a microscope to see the hairs on the

13:48:24 marij, I can't see the hairs with
my naked eye. That's part of the analysis. I do
not remember zeroing the
13:49:18 balance, that is my process.

13:49:23 **State Attorney: Wick, Ann**
REDIRECT

13:49:31 **Other: Nord, Ann**
All procedures were followed.

13:49:47 **State Attorney: Wick, Ann**
No further witnesses for today.

13:49:56 **Judge: Hosack, Charles**
Remember the 9-2 schedule, and the admonition.
Excuse jury.

13:50:51 Recess.

13:50:57 **Stop Recording**

Court Minutes:

Session: HOSACK061608A
Session Date: 06/16/2008
Judge: Hosack, Charles
Reporter: Schaller, Joann

Division: DIST
Session Time: 06:57

Courtroom: Courtroom9

Clerk(s):
Jokela, Pam
Rohrbach, Shari

State Attorneys: Wick, Ann

Public Defender(s): Neils, Martin

Prob. Officer(s):

Court interpreter(s):

Case ID: 0004

Case Number: CR2006-18813

Plaintiff:

Plaintiff Attorney:

Defendant: BEAVERS, MARK DUANE

Pers. Attorney:

Co-Defendant(s):

State Attorney: Wick, Ann

Public Defender: Neils, Martin

Previous audio and annotations can be found in case: 0003.

Additional audio and annotations can be found in case: 0005.

06/18/2008

09:06:56

Recording Started:

09:06:56

Recall
BEAVERS, MARK DUANE

09:07:04 **Judge: Hosack, Charles**
Back in session. Bring jury in.

09:08:01 Jury in place.

09:08:16 **State Attorney: Wick, Ann**
Call David Sincerbeaux

09:08:41 **Other: Sincerbeaux, David**
Sworn by clerk. I work for ISP lab for 12.5 yrs.
I'm a forensic scientist 3.

09:09:14 Explains duties, education. Exh 1, I recognize
it. Our lab number, tape with

09:12:01 my initials. I tested this on 9-7-06. Explains
testing procedure. I opened

09:15:55 the bag and took a small amount out to test. I
randomly took a pinch or two

09:16:35 to test, it contains marijuana. What I pulled
out looked similar to what was

09:16:51 in the bag. The plant material is the same, the
bag has been altered since I

09:17:36 last saw it. The bag is in an additional bag, it
appears to have been opened

09:18:07 once or twice since I last saw it.

09:18:14 **State Attorney: Wick, Ann**
Move to admit.

09:18:17 **Public Defender: Neils, Martin**
Obj, due to chain of custody.

09:20:47 **Judge: Hosack, Charles**
You have an extended legal argument.

09:20:55 **State Attorney: Wick, Ann**
Testimony has been that several officers removed
material, officers drove

09:21:14 vehicles, law enforcement carried evidence in to
a locked area, comments.

09:22:02 Procedures have been followed.

09:22:51 **Judge: Hosack, Charles**
Sustain as to grounds re: this witness.

09:23:10 **State Attorney: Wick, Ann**
Ms Nord testified yesterday how this exhibit
followed chain of custody.

09:23:48 **Judge: Hosack, Charles**
That witness can't testify to how this witness
functioned. Sustain as to this
09:24:05 witness.

09:24:10 **Other: Sincerbeaux, David**
Explains how evidence arrives to the lab and
how it is logged in. Explains
09:25:16 internal chain of custody. I have chain of
custody records, a copy.

09:26:43 **Public Defender: Neils, Martin**
Obj, voir dire.

09:26:53 **Other: Sincerbeaux, David**
Yesterday an employee prepared this document. I
did not prepare it. There are
09:28:48 two documents. I did not prepare the first
document, on the second one I
09:29:08 filled in the parts that I fill in.

09:29:14 **Public Defender: Neils, Martin**
Obj to portions of the document not prepared by
him.

09:29:52 **Judge: Hosack, Charles**
O/R obj.

09:30:20 **Other: Sincerbeaux, David**
Refresh my memory by reviewing my notes.

09:31:12 **Public Defender: Neils, Martin**
Obj. questions witness.

09:31:23 **Other: Sincerbeaux, David**
Records are kept in our file in our lab. I'm
looking at initials that are
09:32:18 mine.

09:32:22 **Judge: Hosack, Charles**
Return to questioning.

09:32:31 **Other: Sincerbeaux, David**
Continues under direct exam.

09:32:40 The things done in the normal course were done
to this exhibit.

09:34:06 **Public Defender: Neils, Martin**
Obj

09:34:08 **Judge: Hosack, Charles**
O/R obj to this witness.

09:34:26 **State Attorney: Wick, Ann**
Move to admit exhibit.

09:34:37 **Public Defender: Neils, Martin**
Renew obj.,

09:34:47 **Judge: Hosack, Charles**
We are boggin down on legal argument, will
excuse jury.

09:35:40 Reviews objections as to removal of evidence to
the lab, and evidence tape

09:36:15 from this exhibit.

09:36:24 **Public Defender: Neils, Martin**
Who had access to evidence room, procedures. I
don't think we have testimony

09:37:03 at state lab for transportation.

09:37:23 **Judge: Hosack, Charles**
I'm not recollecting direct testimony about it
was checked in and out and to

09:38:07 the lab.

09:38:09 **State Attorney: Wick, Ann**
Det Paull testified about packaging, sealing,
initially it.

09:38:38 **Prob. Officer:**

09:38:40 **Judge: Hosack, Charles**
I don't recall testimony about sealing exhibits.

09:40:04 I'm not recalling exact testimony. The state
could then recall Det Paull,

09:40:28 comments. You have other assertions?

09:40:56 **Public Defender: Neils, Martin**
We don't know where evidence from each room was
placed. We have testimony

09:41:18 that there was other material. Lacking evidence

on chain of custody.

09:42:30 **Judge: Hosack, Charles**
Obj is to whether A. Nord had her initials on ?

09:42:53 **Public Defender: Neils, Martin**
Not her, but which technician took evidence to
the room where evidence is

09:43:15 kept.

09:44:57 **Judge: Hosack, Charles**
Sustain at this point, for this witness. As to
the overall chain of custody -

09:45:31 I don't think that would be grounds to overall
sustain the obj. There is

09:46:31 testimony that the items were gathered from the
house. You could have some

09:46:53 sort of limiting instruction.

09:47:48 **Public Defender: Neils, Martin**
It's premature but I will renew objection,
explains.

09:48:43 **State Attorney: Wick, Ann**
Questions witness.

09:48:49 **Other: Sincerbeaux, David**
One of two techs log in evidence, explains.

09:50:16 **Judge: Hosack, Charles**
I'd O/R your objection, you can make that at the
proper time.

09:51:14 **State Attorney: Wick, Ann**
I'd have to recall Det Paull for all four of
these exhibits.

09:51:38 **Judge: Hosack, Charles**
It would be best to allow state to recall Det.
and then recall Mr

09:52:03 Sincerbeaux. Will take a short break.

09:52:22 **Stop Recording**

09:57:30
Recording Started:

09:57:30 **Record**
BEAVERS, MARK DUANE

09:57:35 **Stop Recording**
(On Recess)

09:58:06
Recording Started:

09:58:06 **Record**
BEAVERS, MARK DUANE

09:58:09 **Judge: Hosack, Charles**
Bring in the jury.

09:59:12 Jury in place.

09:59:16 **State Attorney: Wick, Ann**
Recall Det Paull.

09:59:28 **Other: Paull, Det Eric**

09:59:32 **Judge: Hosack, Charles**
You are still under oath.

09:59:40 **Other: Paull, Det Eric**
RE: exhibits 1-4, I packaged the material. I did
that at the evidence

10:00:07 processing room. There was no other evidence in
that room when I did this

10:00:40 packaging. It is a secure room. We, Officer
Martin and myself, we dumped

10:01:10 evidence into bags, they were sealed, initialed,
marked with case name/number.

10:01:32 That starts chain of custody, and we did that
with all four bags. The

10:02:03 evidence tape and other information is on the
bag or signature card. The

10:02:27 internal is the same, the external bag was
placed on it for trial and I did

10:02:43 that. Gives identifying numbers. Review exh bags
1-4, they're all the same.

10:05:27 When I seal the bag I turn it in to property
tech. I've seen property tech

10:06:26 writing/initials before. I recognize her
initials on the exhibits.

10:07:15 **Public Defender: Neils, Martin**
Obj

10:07:17 **Judge: Hosack, Charles**
O/R

10:07:21 **Other: Paull, Det Eric**

10:09:20 **Public Defender: Neils, Martin**
Obj.

10:09:21 **Judge: Hosack, Charles**
O/R

10:09:25 **Other: Paull, Det Eric**
Examins exh 1-4 for chain of custody initials.

10:10:43 **Public Defender: Neils, Martin**
Obj.

10:10:47 **Judge: Hosack, Charles**
Same ruling.

10:10:51 **Other: Paull, Det Eric**
I fill out the state submittal form, that may
have been done with Ms Martin,

10:11:31 I saw the form.

10:12:38 **Public Defender: Neils, Martin**
CROSS

10:14:25 **Other: Paull, Det Eric**
Explains evidence room. My office/area is
locked, only two others have acces

10:17:09 to my area. There was other material, hash in
other containers and tubes.

10:20:04 That was not placed in the bags.

10:20:31 **State Attorney: Wick, Ann**
REDIRECT

10:20:36 **Other: Paull, Det Eric**
ON 8-15-08 when I went back to the evidence room
I saw no difference to the

10:21:02 evidence as when I'd put it there.

10:22:15 **Public Defender: Neils, Martin**
CROSS

10:22:19 **Other: Paull, Det Eric**
There was suspected hash.

10:22:54 **Judge: Hosack, Charles**
Approach.

10:25:03 **State Attorney: Wick, Ann**
REDIRECT

10:25:09 **Other: Paull, Det Eric**
On the signature card there is L. Martins
signature, describes.

10:26:23 **Public Defender: Neils, Martin**
Move to strike.

10:26:29 **Judge: Hosack, Charles**
Same ruling.

10:28:08 **Other: Paull, Det Eric**
Continues describing signature-chain of custody.

10:30:50 **Public Defender: Neils, Martin**
NO CROSS

10:31:18 **State Attorney: Wick, Ann**
Recall Mr Sincerbeaux.

10:31:39 **Other: Sincerbeaux, David**

10:31:43 **Judge: Hosack, Charles**
Still under oath.

10:31:47 **Other: Sincerbeaux, David**
Exh 1,

10:33:02 **Public Defender: Neils, Martin**
Obj

10:33:04 **Judge: Hosack, Charles**
Same ruling.

10:33:08 **Other: Sincerbeaux, David**
Continues outlining chain of custody.

10:34:47 Anne Nord did the weight, I recognize her signature.

10:35:36 A report was produced from my notes. Package was sealed.

10:37:26 **Public Defender: Neils, Martin**
Obj

10:37:29 **Judge: Hosack, Charles**
Upon the grounds discussed on the record, O/R the obj as to chain of custody.

10:37:51

10:38:28 **Other: Sincerbeaux, David**
Exh 2 has bar code, my signature, and signautures that I recognize.

10:40:01 I did testing, the plant material contained marij.

10:40:57 **State Attorney: Wick, Ann**
Move to admit.

10:41:00 **Public Defender: Neils, Martin**
Obj,

10:41:06 **Judge: Hosack, Charles**
On the same basis as exh 1, obj is O/R.

10:41:43 **Other: Sincerbeaux, David**
Exh 3, has our lab number, bar code. I recognize signatures for chain of

10:42:18 custody.

10:42:54 Exh was sealed. I took a small piece of plant material and tested it. Teh

10:43:27 plant material contained marij.

10:43:34 **State Attorney: Wick, Ann**
Move to admit.

10:43:37 **Public Defender: Neils, Martin**
Obj.

10:43:39 **Judge: Hosack, Charles**
Same ruling by the Court.

10:44:20 **State Attorney: Wick, Ann**
Ask to publish to the jury.

10:44:27 **Judge: Hosack, Charles**
No, will not send big, bulky packages to the jury.

10:44:30 **Other: Sincerbeaux, David**
Exh 4, I recognize it partially, I cannot see my signature due to the way its

10:44:47 been packaged. Opens a portion of exh 4 to review signature card. I recognize

10:46:02 signatures of mine and lab tech. I opened a corner and tested plant material

10:46:45 from the inside. The plant mateial contained marijuana.

10:47:24 **State Attorney: Wick, Ann**
Move to admit.

10:47:30 **Public Defender: Neils, Martin**
Obj

10:47:32 **Judge: Hosack, Charles**
Same as before, the ruling is the same.

10:47:43 Admit 1,2,3,4.

10:47:56 **Other: Sincerbeaux, David**
The material from all four bags looked similar. I also received other

10:48:17 evidence. Another bag contained plants. It came in a box that was sealed, and

10:48:49 had initials. I opened it and processed some of the plant material.

10:49:37 **Public Defender: Neils, Martin**
Obj., chain of custody, where the material was from.

10:50:00 **Judge: Hosack, Charles**
RE: the plants, do we have that?

10:50:18 **State Attorney: Wick, Ann**
We don't have it here today, we can get it if we need to.

10:50:29 **Judge: Hosack, Charles**
Sustain at this point, with testifying to an exhibit that is not admitted.

10:50:45 **State Attorney: Wick, Ann**
Ask for a recess to get the subject.

10:50:54 **Judge: Hosack, Charles**
Will take a recess to allow the state to obtain the exhibit.

10:51:11 **Stop Recording**
(On Recess)

11:24:06
Recording Started:

11:24:06 **Record**
BEAVERS, MARK DUANE

11:24:10 **Judge: Hosack, Charles**
Back in session, bring in the jury.

11:25:16 **State Attorney: Wick, Ann**
Recall Det Pall.

11:25:20 **Judge: Hosack, Charles**
Still under oath.

11:25:29 **Other: Paull, Det Eric**
I earlier testified about plants. Exh 120 is the box containing the plants

11:26:06 sent to the lab, the marijuana. I recognize the contents. They are the plants

11:27:33 rolled up in the butcher paper. The box has my initials, dates, chain of

11:27:54 custody. I recognize signatures.

11:28:35 **Public Defender: Neils, Martin**
Obj.

11:28:38 **Judge: Hosack, Charles**
O/R

11:28:41 **Other: Paull, Det Eric**
The box has my original evidence tape, numbers.

11:29:58 From Aug 28 to today they
are still rolled in the butcher paper, more
loose "shake" in the box. On Aug
11:30:42 28 we took pictures of them in groups of five,
rolled them up & placed them
11:31:15 in the box. I went to the CDA Police Dept and
checked out this box today.

11:32:38 **Public Defender: Neils, Martin**
CROSS: none

11:32:44 **State Attorney: Wick, Ann**
Recall David Sincerbeaux

11:32:58 **Judge: Hosack, Charles**
Recalled so still under oath.

11:33:12 **Other: Sincerbeaux, David**
Exh 120 box has our bar code, and my signature
tape from 9-27-06. I checked
11:34:18 out and took it to my lab. I recognize
signatures.

11:34:35 **Public Defender: Neils, Martin**
Obj

11:34:36 **Judge: Hosack, Charles**
Same obj as before and the ruling is the same.

11:35:00 **Other: Sincerbeaux, David**
On 9-27-06 I opened it and it looks like plants.
I took a pinch for testing,

11:37:12 **State Attorney: Wick, Ann**
Move to admit.

11:37:13 **Public Defender: Neils, Martin**
Obj.

11:37:15 **Judge: Hosack, Charles**
Continuing obj, same ruling.

11:37:22 Admit exh 120.

11:37:40 **Other: Sincerbeaux, David**
I tested for THC which is a coumpound the plant
produces as a by-product

11:38:11 found in the leaves. The stem or seeds does not
11:38:33 produce the THC, but there is
usually some transfer. The budding is where the
11:38:56 concentration the highest.
Marijuana is a budding plant if you let it grow
long enough.

11:39:08 **Public Defender: Neils, Martin**
CROSS

11:39:12 **Other: Sincerbeaux, David**
I took a sample from the box, a pinch. I took
leaves. The box is about 3
11:40:11 feet. I didn't note how many plants, there are
numerous plants. I did not
11:41:10 weigh the amount or pinch that I took for
testing. On exh 1-4 I open up one
11:42:23 corner and grabbed a pinch. They were clear
plastic bags. I did not move
11:43:03 material around to see what is below the
surface. I did the microscopic test
11:43:21 frst. Looking for 3 things, the hairs, under the
leaf there is a different
11:43:57 type of hair, and the seed if it is present. On
exh 1-4 I grabbed different
11:45:49 leaf fragments for testing. We focus on THC
compound, there are other
11:46:37 compounds but we focus on THC. THC is the
psychotropic ingredient. The third
11:47:44 test if a chemical test.

11:48:38 **State Attorney: Wick, Ann**
REDIRECT

11:48:43 **Other: Sincerbeaux, David**
I frequently testify in court about substances.
We don't testify about
11:49:19 presumptives, explains. In order to be sure I
wait until testing.

11:50:27 **Public Defender: Neils, Martin**
Obj.

11:50:31 **Judge: Hosack, Charles**
O/R

11:51:21 **Public Defender: Neils, Martin**
RECROSS

11:51:25 **Other: Sincerbeaux, David**
Hemp would be visually similar, wouldn't be able
to tell without going to
11:52:27 test. There are some macroscopic observations
that may look like other
11:53:38 plants.

11:53:42 **State Attorney: Wick, Ann**
REDIRECT

11:53:46 **Other: Sincerbeaux, David**
Visual observation is one part of our training,
but we're trained to use all
11:54:19 observations.

11:54:23 **State Attorney: Wick, Ann**
REST.

11:54:27 **Judge: Hosack, Charles**
The stte has completed their portion of the
case. The defense has opportunity
11:54:45 to present. Will take a short break. As soon as
we know how we're going
11:55:12 forward we'll advise the jury. Excuse the jury.

11:55:57 **Public Defender: Neils, Martin**
We will proceed, I need a few minutes to talk to
my client.

11:56:16 **State Attorney: Wick, Ann**
I'll have the motion to put on the record, that
we addressed in chambers
11:56:32 yesterday.

11:56:34 **Judge: Hosack, Charles**
Go ahead.

11:56:39 **State Attorney: Wick, Ann**
A motion in limine to limit def from testifying
about medical issues, Rule 29
11:57:08 motion, this is similar. Def will have to prove
a necessity defense, no
11:57:37 evidence he can meet that burden. Argues. Move

11:58:13 to limit unless there is an offer of proof he can meet that.

11:58:21 **Public Defender: Neils, Martin**
Necessity defense is common law. Testimony can be through a lay person. As a

11:59:02 affirmative defense is that despite the state he should be allowed to present

11:59:39 evidence. Comments re: Appellate cases. Should be able to go forward with

12:02:35 medical condition as it relates to Ct III. In no way did he intend to deliver

12:02:56 or give away. Marijuana was for his personal use, and his understanding of

12:03:18 his medical condition. Is relevant as to his possessing the marijuana.

12:03:50 **State Attorney: Wick, Ann**
The motion I made is a factual one. Def cannot establish a necessity defense.

12:04:30 Jury instructions and verdict will have to be tailored.

12:05:55 **Judge: Hosack, Charles**
State v. Tadlock we've discussed on and off. I do not find a case that says

12:06:23 you have to have an expert for necessity defense. Comments.

12:08:17 I won't make a ruling at the outset of the defense case. Tadlock case seems

12:08:35 to indicate that the def perception - can testify. Deny Motin in Limine.

12:09:35 Recess.

12:10:41 **Stop Recording**
(On Recess)

12:25:19 Recording Started:

12:25:19 **Record**
BEAVERS, MARK DUANE

12:25:27 **Judge: Hosack, Charles**
Back in session, bring jury in.

12:26:58 Mr Neils has advised he will present evidence.

12:27:10 **Public Defender: Neils, Martin**

12:27:11 **Defendant: BEAVERS, MARK DUANE**

Sworn by clerk. I've heard the testimony in this case and from Aug 13, 2006.

12:28:12 I was working in the back of my residence. I bought the house in Nov 1989. I

12:28:41 had contact with police. There was marijuana there, it was mine. I was in the

12:29:08 process of raising marijuana. It was for my use. Until about 12 years ago my

12:29:58 health was good. I had employment. I became sick approximately 12 years ago.

12:30:33 Symptoms were that I started passing blood, pain and discomfort in rectal

12:30:55 area, cramps. I became somewhat incontinent.

Pain in the digestive area,

12:31:22 then headaches, severe and several times a week.

At the worst point they were

12:31:47 almost daily. Incontinent several times a week.

As the condition worsened

12:32:20 there was pain daily. It was progressive. Got worse and worse, required I

12:33:00 wear a diaper to catch it. I continue with that.

I was a student then, a

12:33:25 diesel program at NIC. I was not able to work as a diesel mechanic. I was

12:33:47 getting sick, symptoms were worse. I was no

longer able to work. I was sick

12:34:17 five out of seven days per week. I had spent

time in a school program,

12:34:56 financial situation was precarious at best. I

was using money I had saved,

12:35:18 borrowed money. I did not seek medical

attention. I didn't have the money for

12:35:40 it, didn't have health insurance, doors were

closed to me. I tend to have

12:36:19 some mistrust of FDA, medical pharmacy. In my

view I'd rather approach health

12:36:53 in a more holoistic way. I made changes to my

diet. I had taken yoga, did

12:37:38 that again. I started less on canned foods, or

prepared foods. Cooked by own

12:37:58 food, organic foods. I did exercises. I was able

to begin seeing improvement,

12:38:52 but not able to cure it. I studied regarding my
12:39:28 symptoms and what might help
12:39:55 remedy. I studied for a period of months. I
12:40:40 gathered more material with
12:41:12 medical references. Clearly I had some problem
12:41:37 with digestion. I didn't
12:42:16 really know what the bleeding was coming from.
12:42:35 That was fearful. I had no
12:42:53 money, so I did the best I can with what I had.
12:43:25 I started growing marijuana
12:43:42 as a medicine. That was based on my research.
12:44:08 Prior to this I had used
12:44:25 marijuana for recreational purposes. Before I
12:44:42 became ill I used marijuana at
12:45:08 the end of the day, like some people would have
12:45:25 a beer. That changed when I
12:45:42 got sick. Once I got sick I used more than I had
12:46:09 when I used recreationally.
12:46:24 Now I needed it throughout the day to manage my
12:46:41 symptoms. Initially I smoked
12:46:58 it, then I became more aware through research
12:47:15 that my symptoms would be more
12:47:32 useful through food. I had learned how to regulate
12:47:49 my dosages. The exhibits
12:48:06 show cooking with marijuana. The ratings
12:48:23 exhibits were research I was doing.

12:46:09 **State Attorney: Wick, Ann**
Obj.

12:46:24 **Judge: Hosack, Charles**
It may not be responsive, and relevant to
personal belief of the witness.

12:46:48 **Other: Sincerbeaux, David**

12:46:51 **Defendant: BEAVERS, MARK DUANE**
I read materials regarding marijuana, I suppose
12:47:18 it was extensive. I've tried
12:47:35 to follow information. I looked for various
12:47:52 sources. From my own experience I
12:48:09 noticed differences from different strains of
12:48:26 marijuana. I refer to "shake"
12:48:43 as the leaves. The way I harvested the leaves are
12:49:00 removed. I'd keep the whole

12:50:03 leaves separate from the leaves from buds. What
I found was that the bud is

12:50:54 more appropriately smoked, leaf is best when put
in food and eaten.

12:51:25 **State Attorney: Wick, Ann**
Obj. ask for a limiting instruction.

12:51:34 **Judge: Hosack, Charles**
We'll see what the answer is.

12:51:48 **Defendant: BEAVERS, MARK DUANE**
When you eat the shake in food the effect is
more physical, relaxing. It

12:52:25 would make you fall asleep. I did fall asleep
when I was experiencing with

12:52:39 dosage in the food. I smoked the bud material.
Smoking it tended to be

12:54:01 relaxing, a mood stabilizer. I could be relaxed.
Leaves have a flavor,

12:55:44 explain. I discovered a process to process hash,
a concentrate of THC.

12:56:41 Separating the resin from the leaf material,
gotten rid of all the green

12:57:03 stuff, so you don't have the taste that goes with
it, to not affect the flavor

12:57:33 of the food. I raised marijuana. I had two
greenhouses. It was a two season

12:58:17 greenhouse, spring and summer. Sometimes I kept
track of the plants. I

12:58:55 raised. For treating my symptoms. The scales were
for the weight, buds and the

12:59:51 affects of the plants. I used the scales for
cooking, weigh in order to get

13:00:14 the proportions right. I put buds in jars as
they're a solid container,

13:01:10 rather than a bag which breaks down the bud. I
sealed the jars so I could

13:01:37 have them for longer term storage. Once leaves
had dried they'd be broken

13:02:10 down, easier to store. Smaller weights were
handier for cooking. On the first

13:03:22 greenhouse - it wasn't very secure. I had
lighting; explains. I studied on

13:04:12 how to raise marijuana, different types. Which
strain to treat which kind of

13:05:00 illness. Explains male and female plants.
Comments on plants harvested. I had
13:08:56 considered moving from the state of Idaho. I was
already sick, I was hearing
13:09:19 about state's that allowed medical marijuana. I
talked to people in
13:09:54 Washington. I went there in Aug 2005. I expected
to meet people who knew more
13:10:31 than I did about medical marijuana. I didn't
meet anybody who had the same
13:10:54 symptoms I had, but a lot of other people who
were sick. I explored the
13:11:13 possibility of raising for other people. I
arranged to meet with Pat Style
13:11:52 about raising marijuana. I purchased 5 acres of
bare land in WA so I could
13:12:18 move over there. That was the end of Aug 2005. I
labeled most everything I
13:12:49 grew. The labels that said 'the Bud Shop' was
from my idea of moving to
13:13:15 WA. That was an idea, not an entity. Washington
was still fairly
13:14:56 restrictive. The marij labeled with Bud Shop
labels was for myself. The bud is
13:15:50 in the greatest demand. The leaf product is

13:16:31 **State Attorney: Wick, Ann**
Obj.

13:16:33 **Judge: Hosack, Charles**
Sustain.

13:16:36 **Defendant: BEAVERS, MARK DUANE**
I had some idea of how much marijuana was in my
residence. I didn't think
13:17:15 there was 25 lbs. I don't know where they got
that. I had a garden, grew
13:18:09 herbs and mint, other things. I'd grow enough
for me, for supplies to last at
13:18:58 least a year. The fact that I was planning to
move did affect the amount I
13:19:43 was growing. Herbs were packaged the same as
marijuana. Not all the jars with
13:20:29 herbs had labels, same with marijuana. For my
symptoms I'd both eat and smoke
13:21:16 marijuana. I had worked out a program for myself

for 1/4 to 1/2 ounce a day.
13:21:35 I didn't raise marij in the winter. I felt I had
enough to move to WA. I
13:22:08 needed to take both bud and shake for my
symptoms. The marijuana was for my
13:23:05 personal consumption. I haven't used recently.
My condition has worsened.
13:23:36 That has caused me concern.

13:23:48 **State Attorney: Wick, Ann**
CROSS

13:23:55 **Defendant: BEAVERS, MARK DUANE**
When I bought the property I had a mortgage
payment of about 625.00 per
13:25:08 month. I was a homeowner. I had a couple boats
and cars. I stopped working
13:25:37 full time in fall of 1996. The third vehicle was
a Mercedes from 2005. I paid
13:26:43 1,000.00. I had a banking account, I made
deposits. Deposits were probably
13:27:30 over a 1,000 per month. I put 2,000 down on the
WA property, monthly payment
13:28:00 was 200.00 Equity between 15,000 to 20,000 but I
don't know if I have equity
13:28:34 now because I haven't made payment since last
Dec. I stopped house payment
13:29:03 Dec last year. I did a well on the WA property,
was 7,000.00. I don't
13:30:01 remember when I paid it off. Was Dec 2005. I
became ill in the fall of 1996.
13:31:38 I didn't go to a doctor. Because I didn't have
money. After 2006 when I was
13:32:39 arrested I went to a doctor. I had bloodwork
done, and doctor in Washington.
13:33:09 I was self employed, I took on work projects
when I could. I did not document
13:33:40 through tax returns. Symptoms were bad during
1996-2000, around there. During
13:34:57 that time I was paying my bills with credit
cards. I don't see all of my
13:35:38 books in the photos. I bought some seeds to
start growing marijuana, 10 seeds
13:36:29 are from 35-85.00. I bought lights to grow,
soil, for the greenhouse. I
13:37:42 didn't put the boats up for sale prior to Aug

13:38:12 13, 2006. I sold a boat from
13:40:06 '96-2000. I had six ounces of bud material. I
packaged in jars and bags. I
13:40:58 had labels on the jars. Bud Shop was a business
concept. My understanding
13:41:30 after talking to the attorney in Spokane - I
abandoned the idea. It
13:42:32 disintegrated over time. I wanted to see how it
was done after I obtained a
13:43:10 medical marijuana permit. Permit was not from
Idaho. By Dec 2007 I had
13:43:52 abandoned the idea of the Bud Shop. There would
have to be a price for food
13:44:49 that marijuana was in. I was researching the
idea. There were plants of both
13:45:25 greenhouses. I had 11 plants in one greehouse,
30 in the other and 4
13:46:23 downstairs. I had 4 plants in the house, those
are mother plants. They had
13:47:24 been harvested and were for clones. Since Aug
2006 I've gone to WA several
times.

13:47:26 **Public Defender: Neils, Martin**
Obj.

13:47:28 **State Attorney: Wick, Ann**
Ask to be heard outside the presence of the
jury.

13:47:45 **Judge: Hosack, Charles**
OK.

13:48:47 Jury is out.

13:48:50 **State Attorney: Wick, Ann**
He's testified about money, going to a doctor,
hiring a private attorney
13:49:33 after Aug 2006.

13:49:37 **Public Defender: Neils, Martin**
Testimony is he didn't have moeny - has nothig
to do with post Aug 2006. Not
13:50:07 relevant. Motivation is different, certainly in
his mind.

13:50:48 **Judge: Hosack, Charles**

To some degree would be cumulative, more prejudicial. Probative is nill. Obj is sustained. Bring jury in.

13:51:29 is sustained. Bring jury in.

13:52:45 Jury in place.

13:52:54 **State Attorney: Wick, Ann**
Continue CROSS

13:53:00 **Defendant: BEAVERS, MARK DUANE**
From 1996-2000 I had monthly bills. Until Aug 2006. I wasn't taking in self

13:54:14 employment when my illness was at its worst. As it improved I worked. Up

13:54:45 until Aug 2006 symptoms were managed. I was working as often as I could. It

13:55:17 was progressive but I've never been able to work like before I was sick. I

13:55:39 can't do 40 hours or more a week. I didn't use income to go to a doctor.

13:56:14 **Public Defender: Neils, Martin**
REDIRECT

13:56:21 **Defendant: BEAVERS, MARK DUANE**
From 1996- , when I finished program at NIC - I couldn't work. Once I was

13:57:08 growing then I worked out the amounts. My condition improved. As time

13:57:33 progressed and my condition continued to improve I felt I was doing a

13:57:50 reasonable job managing it. Everything comes to a choice, the boats were old

13:58:28 wood boats that needed repair. When my condition was improving the steps I

13:59:09 was doing was helping, I didn't feel motivated to go to a doctor. I was in

13:59:33 the process of working on the boats, not in sellable condition. I had two

13:59:54 Mercedes, one I purchased for 1,000. I had taken a diesel course, they were

14:00:19 old diesels. I felt I could buy them, fix them up and sell make money. There

14:00:59 were months when income was less than 1,000. It was hard to live on 1,000 a

14:01:20 month. I wasn't working all the time, I worked when I had jobs to do, when no

14:01:58 work then I worked on the boats and cars. If I'd
sold my home I would have no
14:02:19 where to go. I did home improvement on my time,
I didn't pay for labor. I'm
14:03:20 talking about a business plan, to see what it
would take to move to WA. I was
14:03:45 formulating the idea, there were no concrete
plans. I was still doing
14:04:18 research. I hadn't taken any steps. I had raised
no marijuana as part of a
14:04:42 business plan. The marijuana I raised was for my
consumption. I had talked to
14:05:03 medical marij people about prices, foods,
amounts used in recipes. An exh was
14:05:42 a menu: that was something I got from the
HempFest staff people.

14:06:43 **Public Defender: Neils, Martin**
REST

14:06:47 **State Attorney: Wick, Ann**
I may have rebuttal. It would be short.

14:07:17 **Judge: Hosack, Charles**
Will go into evening recess. We'll work in final
instructions and hopefully
14:07:59 get this to you tomorrow. Admonitions. Excuse
until 9:00 tomorrow.

14:09:08 **Stop Recording**
(On Recess)

Court Minutes:

Session: HOSACK061608A
Session Date: 06/16/2008
Judge: Hosack, Charles
Reporter: Schaller, Joann

Division: DIST
Session Time: 06:57

Courtroom: Courtroom9

Clerk(s):
Jokela, Pam
Rohrbach, Shari

State Attorneys: Wick, Ann

Public Defender(s): Neils, Martin

Prob. Officer(s):

Court interpreter(s):

Case ID: 0005

Case Number: CR2006-18813

Plaintiff:

Plaintiff Attorney:

Defendant: BEAVERS, MARK DUANE

Pers. Attorney:

Co-Defendant(s):

State Attorney: Wick, Ann

Public Defender: Neils, Martin

Previous audio and annotations can be found in case: 0004.

06/19/2008

09:06:19

Recording Started:

09:06:19

Recall

BEAVERS, MARK DUANE

09:06:42

Judge: Hosack, Charles

09:07:03 Back on the record. Attorney present. State would like to present rebuttal, correct?

09:07:05 **State Attorney: Wick, Ann**
Yes, but I'd like to present to the court first.
Def testified that he only

09:07:28 made hash for himself, I have a witness that def sold hash to another person.

09:07:44

09:07:48 **Public Defender: Neils, Martin**
This falls into prior uncharged conduct, no notice from state to use 404b in

09:08:04 this trial so object.

09:08:10 **State Attorney: Wick, Ann**
It's not presented in my case in chief, it only came up because of def's

09:08:37 statements, it's to impeach def as a witness.

09:08:49 **Public Defender: Neils, Martin**
404b does not make a distinction between case in chief and rebuttal. The

09:09:13 state listed him as a witness and clearly the state intended to present this,

09:09:32 it is 404b without notice.

09:09:37 **Judge: Hosack, Charles**
The person to be called is a disclosed witness, the name is known, calling

09:10:01 for purposes of impeachment, so the issue is the 404b. Is the testimony from

09:10:28 this witness disclosed in any kind of officers report?

09:10:39 **State Attorney: Wick, Ann**
Yes.

09:10:43 **Judge: Hosack, Charles**
And no dispute that this info is in police report or other discovery?

09:10:59 **Pers. Attorney:**

09:11:01 **Public Defender: Neils, Martin**
Yes.

09:11:02 **Judge: Hosack, Charles**
The defense is entitled to a limiting instruction, not for the truth, but to

09:11:22 impeach the credibility of the witness. 404b
does require notice, but in this

09:11:38 instance where it is limited to impeachment on
rebuttal on an issues

09:12:00 introduced by the defense. I don't believe it
is 404b evidence, it was

09:12:18 discoverable. The court ordered not to use the
word "hash."

09:12:56 **Public Defender: Neils, Martin**
Obj, prejudicial far outweighs the probative
value. The state had the

09:13:38 opportunity to attack his testimony. Argues.

09:15:21 Since the state's limited value is to attack the
credibility, it is extremely

09:15:45 high for prejudicial.

09:15:52 **Judge: Hosack, Charles**
What is the witness going to say?

09:16:02 **State Attorney: Wick, Ann**
Mr Wixsson will testify that he became familiar
with def. Def brought in some

09:16:47 bubble wrap, or hash for Mr Wixson Def testified
that he only made hash for

09:17:38 himself. This is highly probative. You can't get
up there on the stand and

09:17:59 lie.

09:18:01 **Judge: Hosack, Charles**
Other than he got bubble wrap from def should be
all the state brings out. The

09:18:44 defense may want to bring out the arrest. RE:
the probative value, the court

09:19:08 has been dealing with the medical necessity, I'm
almost certain I'm not going

09:19:24 to give the medical instruction on that. In
looking at Tadlock case, The

09:20:02 delivery is impeachment here, trafficking is
pure possession, comments on the

09:20:53 law as far as the legislature is concerned.
Probative and prejudicial doesn't
09:21:07 weigh in on the possession.
09:22:13 Will be for impeachment first, explains what
testimony can be.

09:24:06 **State Attorney: Wick, Ann**
Ask for a moment to talk to the witness?

09:24:18 **Judge: Hosack, Charles**
Recess.

09:24:27 **Stop Recording**
(On Recess)

09:28:37
Recording Started:

09:28:37 **Record**
BEAVERS, MARK DUANE

09:28:38 **Judge: Hosack, Charles**
Back in session, bring jury in.

09:29:56 The state did indicate they wanted to present
some rebuttal evidence.

09:30:10 **State Attorney: Wick, Ann**
Call John

09:30:30 **Other: Wixson, John**
Sworn by clerk. I'm the assistant mgr in CDA.
Before that I worked at the
09:30:56 Taj. While there I became acquainted with def. He
would come in to the store
09:31:19 and buy ice almost on a daily basis. We'd have
conversation. I asked him why
09:31:39 he bought all the ice. He responded he used it
to make bubble hash and he
09:31:57 gave me a sample of hash. I'm familiar with hash.
He told me this was bubble
09:32:19 hash. It would have been about 3 yrs ago, in the
summer of 2005.

09:32:38 **Public Defender: Neils, Martin**
Obj, motion to strike. Ask a limiting
instruction.

09:33:03 **Judge: Hosack, Charles**
O/R to the extent that this is offered for
09:33:25 impeachment. The believability of
a witness can be challenged, explains. It is
09:33:55 admitted only for the
credibility of a witness, it is not for the
actual fact.

09:34:31 **Other: Wixson, John**
That in sometime in the summer of 2005.

09:34:42 **Public Defender: Neils, Martin**
CROSS

09:34:46 **Other: Wixson, John**
I tried some of it, the bubble hash. I did not
consume all of it. I left the
09:35:07 unused portion in my house. It was confiscated
by police, I was charged and
09:35:36 I pled guilty. I told police I got it from some
guy named "Mark" I told
09:36:02 police that when they came to my house. They
asked me if I'd do a buy from
09:36:24 someone and I said "no, I didn't know anyone to
buy from." I've been at def
09:36:49 house, we played Risk. I didn't bring marijuana,
I consumed marijuana there.

09:37:55 **State Attorney: Wick, Ann**
No redirect.

09:38:03 No further rebuttal.

09:38:31 **Judge: Hosack, Charles**
There is always the opportunity for back and
forth rebuttal.

09:38:32 **Public Defender: Neils, Martin**
Call Mark Beavers

09:38:40 **Judge: Hosack, Charles**
Still under oath.

09:38:46 **Defendant: BEAVERS, MARK DUANE**
I've heard Mr Wixsom testimony, I did not
provide him bubble hash. He came
09:39:07 over to my house to play Risk, he's been over

several times to play Risk.
09:39:31 The game lasts a long time, stop and take
breaks. There were many times him
09:40:29 and others would be alone, without me.
09:40:45 **State Attorney: Wick, Ann**
Obj.
09:40:48 **Judge: Hosack, Charles**
O/R
09:40:53 **Defendant: BEAVERS, MARK DUANE**
We played the game in the dining room, there was
bubble hash in the dining
09:41:10 room.
09:41:26 **State Attorney: Wick, Ann**
CROSS
09:41:30 **Other: Wixson, John**
I haven't talked to Wixson for - I can't
remember when the last time
09:42:10 was that I talked to him.
09:43:07 **Judge: Hosack, Charles**
That completes testimony. We've been working on
instructions, we'll finish
09:43:24 that and get to you shortly. Recess.
09:43:53 **Stop Recording**
(On Recess)
10:37:50
Recording Started:
10:37:50 **Record**
BEAVERS, MARK DUANE
10:37:51 **Judge: Hosack, Charles**
Back on the record. The Court has had discussion
with counsel re: jury
10:38:07 instructions.
10:38:22 **State Attorney: Wick, Ann**
For the record, agree with the instructions in
the context of all our

10:38:46 discussins. But re: trafficking we're combining
to one count, comments re:

10:39:40 plants and the weight arguments.

10:40:53 **Judge: Hosack, Charles**
Comments regarding charges of all marijuana, it
is more of an enhancement.

10:42:02 **Public Defender: Neils, Martin**
Agree with the court's analysis, comments. The
end result is one conviction.

10:43:02 We've asked this court to give an instruction on
the necessity defense based

10:43:37 on Hastings case, necessity defense was
applicable. Comments re: Tadlock,

10:44:49 appears in conflict with other cases. Hastings
does not mention delivery, it

10:46:40 does mention growing of marijuana, necessity
defense is available to us.

10:49:02 Testimony is that def was ill and indigent.
There is evidence the jury can

10:49:58 consider that he restricted his activity to his
residence. Was not exposing

10:50:17 the public to danger. He believed he had a
serious illness. Does support

10:50:50 common law necessity defense.

10:51:10 **Judge: Hosack, Charles**
The Court has determined not to give the
necessity defense instruction.

10:51:43 Insufficient to establish as a matter of law
that the evidence in the

10:51:56 record supported that defense. RE: trafficking
charge there is no evidence

10:52:29 that the amounts were necessary to treat the
condition. RE: lesser of

10:52:45 possession, closer question because of the
Hastings case. But with the

10:53:09 amounts here, doesn't establish in the Court's
view, or that the objective

10:53:41 couldn't be accomplished by a lesser amount.

10:55:27 Bring jury in.

10:55:56 Jury has returned. We have the final
instructions, will now read

10:56:28 instructions.

11:15:27 **State Attorney: Wick, Ann**
Closing argument.

11:47:10 **Public Defender: Neils, Martin**
Closing argument.

12:25:49 **State Attorney: Wick, Ann**
Final closing.

12:42:20 **Other: clerk**
Swears bailiff to deliberation oath.

12:42:22 **Judge: Hosack, Charles**
Will now select the alternate juror, #4. Thanks
alternate juror. Excuses jury
12:46:14 to begin deliberation.
12:46:46 Recess.

12:46:54 **Stop Recording**
(On Recess)

15:03:50
Recording Started:

15:03:50 **Record**
BEAVERS, MARK DUANE

15:04:22 **Judge: Hosack, Charles**
Back in session. Bailiff has advised jury has
reached a verdict, bring jury
15:04:43 in.
15:05:37 Jury is present. Reviews verdict.

15:06:00 **Other: clerk**
Reads verdict.

15:07:38 **Judge: Hosack, Charles**
Questions jury as to if this is their verdict.

15:07:56 **Other:**
Panel indicates 'yes'.

15:07:59 **Judge: Hosack, Charles**
Does counsel wish to have the jury polled?

15:08:05 **State Attorney: Wick, Ann**

NO

15:08:07 **Public Defender: Neils, Martin**
YEs

15:08:20 **Other: clerk**
Polls jury, entire jury answers Yes.

15:09:23 **Judge: Hosack, Charles**
Thanks jury for their service.

15:11:13 Will set for sentencing and order PSI, order
eval. Sent for 8-20-08 @ 3:00.

15:12:24 **Public Defender: Neils, Martin**
I will need to discuss my clients right to
remain silent, we have another

15:12:37 trial in July.

15:12:48 **State Attorney: Wick, Ann**
That was continued.

15:12:56 **Judge: Hosack, Charles**
If you want to put off sentencing you can make
that motion.

15:13:42 Recess.

15:13:47 **Stop Recording**

STATE OF IDAHO } ss
COUNTY OF KOOTENAI
FILED: 6-16-08
AT 12:50 O'CLOCK P M
CLERK, DISTRICT COURT
Shari R.
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,)	
	)	Case No. CR-F07-27416
Plaintiff,)	
)	
vs.	)	ORDER TO CONTINUE TRIAL
)	
MARK D. BEAVERS,)	
)	
Defendant.)	
_____)	

The Court having before it the STATE'S Motion, and good cause thus appearing, now
therefore;

IT IS HEREBY ORDERED THAT the trial scheduled for July 15, 2008, is continued.

ENTERED this 13 day of June, 2008.

C. D. Lee
JUDGE

CLERK'S CERTIFICATE OF MAILING

I hereby certify that on the 16 day of June, 2008, that a true and correct copy of
the foregoing was mailed/delivered by regular U.S. Mail, postage prepaid, Interoffice Mail, Hand
Delivered, or Faxed to:

Prosecutor <u>Fay</u>	Bonding Co. _____
Defense Attorney <u>P.D. Fay</u>	Auditor _____
Defendant _____	Police Agency _____
KCPSB _____	Other _____

DANIEL ENGLISH
CLERK OF THE DISTRICT COURT

BY: Shari R., Deputy Clerk

ORDER TO CONTINUE TRIAL

STATE OF IDAHO } ss
COUNTY OF KOOTENAI
FILED: 6-19-08
AT 5:00 O'CLOCK 1 M
CLERK, DISTRICT COURT
Shaw
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,

Plaintiff,

vs.

MARK DUANE BEAVERS,


Defendant.

Case No. CR-06-18813

JURY INSTRUCTIONS

ATTACHED HERETO are the Jury Instructions given in the trial of the above-captioned matter. Copies have been given to counsel of record.

Dated this 19 day of June, 2008.


Charles W. Hosack, District Judge

INSTRUCTION NO. 1

Now that you have been sworn as jurors to try this case, I want to go over with you what will be happening. I will describe how the trial will be conducted and what we will be doing. At the end of the trial, I will give you more detailed guidance on how you are to reach your decision.

Because the state has the burden of proof, it goes first. After the state's opening statement, the defense may make an opening statement, or may wait until the state has presented its case.

The state will offer evidence that it says will support the charge or charges against the defendant. The defense may then present evidence, but is not required to do so. If the defense does present evidence, the state may then present rebuttal evidence. This evidence is offered to answer the defendant's evidence.

After you have heard all the evidence, I will give you additional instructions on the law. After you have heard the instructions, the state and the defense will each be given time for closing arguments. In their closing arguments, they will summarize the evidence to help you understand how it relates to the law. Just as the opening statements are not evidence, neither are the closing arguments. After the closing arguments, you will leave the courtroom together to make your decision. During your deliberations, you will have with you my instructions, the exhibits admitted into evidence and any notes taken by you in court.

INSTRUCTION NO. 2

The Information charges the defendant with the following crimes allegedly committed as follows:

COUNT I charges: **TRAFFICKING IN MARIJUANA**. The Information alleges the following: That the defendant, **MARK DUANE BEAVERS**, on or about the 13th day of August, 2006, in the County of Kootenai, State of Idaho, did knowingly possess twenty-five (25) pounds or more of marijuana, a Schedule I controlled substance,

COUNT II charges: **TRAFFICKING IN MARIJUANA**. The Information alleges the following: That the defendant, **MARK DUANE BEAVERS**, on or about July and/or August, 2006, in the County of Kootenai, State of Idaho, did knowingly possess or manufacture twenty-five (25) or more marijuana plants, a Schedule I controlled substance,

COUNT III charges: **POSSESSION OF A CONTROLLED SUBSTANCE WITH THE INTENT TO DELIVER**. The Information alleges the following: That the defendant, **MARK DUANE BEAVERS**, on or about the 13th day of August, 2006, in the County of Kootenai, State of Idaho, did unlawfully possess a controlled substance; to-wit: Marijuana, a Schedule I controlled substance, with the intent to deliver the aforementioned controlled substance, all of which is contrary to the form, force and effect of the statute in such case made and provided against the peace and dignity of the People of the State of Idaho.

To these charges the defendant has pled not guilty.

INSTRUCTION NO. 3

The Information in this case is a mere accusation or charge against the defendant and does not constitute any evidence of the defendant's guilt; you are not to be prejudiced or influenced to any extent against the defendant because a criminal charge has been made.

INSTRUCTION NO. 4

Your duties are to determine the facts, to apply the law set forth in my instructions to those facts, and in this way decide the case. In determining the facts, the law requires that your decision be made solely upon the evidence admitted in this trial. In applying the law, you must follow my instructions regardless of your own opinion of what the law is or should be, or what either side may claim the law to be. You must consider all of the instructions as a whole, not picking out one and disregarding others. Neither sympathy nor prejudice should influence you in your deliberations. Faithful performance by you of these duties is vital to the administration of justice.

The evidence in this case consists of the testimony of the witnesses, the exhibits offered and received, and any stipulated or admitted facts. The production of evidence in court is governed by rules of law. At times during the trial, an objection may be made to a question asked of a witness, or to a witness' answer, or to an exhibit. This simply means that I am being asked to decide a particular rule of law. Arguments on the admissibility of evidence are designed to aid the Court and are not to be considered by you or affect your deliberations. If I sustain an objection to a question or to an exhibit, the witness may not answer the question or the exhibit may not be considered. Do not attempt to guess what the answer might have been or what the exhibit might have shown. Similarly, if I tell you not to consider a particular statement or exhibit you should put it out of your mind, and not refer to it or rely on it in your later deliberations.

During the trial I may have to talk to the parties about the rules of law, which should apply to this case. Sometimes we talk here at the bench. At other times I will excuse you from the courtroom so that you can relax in the jury room while we work out any problems. You are

not to speculate about any discussions between the attorneys and the Court. The discussions are necessary from time to time to help the trial run more smoothly.

Some of you may have heard the terms “circumstantial evidence,” “direct evidence” and “hearsay evidence.” Do not be concerned with these terms. You are to consider all of the evidence admitted in this trial.

However, the law does not require you to believe all the evidence. As the sole judges of facts, you must determine what evidence you believe and what weight you attach to it.

There is no magical formula by which one may evaluate testimony. You bring with you to this courtroom all the experience and background of your lives. In your everyday affairs you determine for yourself whom you believe, what you believe, and how much weight you attach to what you are told. The same considerations that you use in your everyday dealings in making these decisions are the considerations which you should apply in your deliberations.

In deciding what to believe, do not make your decision simply because more witnesses may have testified one way than the other. Your role is to think about the testimony of each witness you heard and decide how much you believe of what the witness had to say.

A witness who has special knowledge in a particular matter may give an opinion on that matter. In determining the weight to be given such an opinion, you should consider the qualifications and credibility of the witness and the reasons given for the opinion. You are not bound by such opinion. Give it the weight, if any, to which you deem it entitled.

INSTRUCTION NO. 5

Under our law and system of justice, the defendant is presumed to be innocent. The presumption of innocence means two things.

First, the state has the burden of proving the defendant guilty. The state has that burden throughout the trial. The defendant is never required to prove his or her innocence, nor does the defendant ever have to produce any evidence at all.

Second, the state must prove the alleged crime beyond a reasonable doubt. A reasonable doubt is not a mere possible or imaginary doubt. It is a doubt based on reason and common sense. It is the kind of doubt which would make an ordinary person hesitant to act in the most important affairs of his or her own life. If after considering all the evidence you have a reasonable doubt about the defendant's guilt, you must find the defendant not guilty.

INSTRUCTION NO. 6

If during the trial I may say or do anything that suggests to you that I am inclined to favor the claims or position of any party, you will not permit yourself to be influenced by any such suggestion. I will not express or intend to express, nor will I intend to intimate, any opinion as to which witnesses are or are not worthy of belief; what facts are or are not established; or what inferences should be drawn from the evidence. If any expression of mine seems to indicate an opinion relating to any of these matters, I instruct you to disregard it.

INSTRUCTION NO. 7

Do not concern yourself with the subject of penalty or punishment. That subject must not in any way affect your verdict. If you find the defendant guilty, it will be my duty to determine the appropriate penalty or punishment

INSTRUCTION NO. 8

If you wish you may take notes to help you remember what the witnesses said. If you do take notes, please keep your notes to yourself until you and your fellow jurors go to the jury room at the end of the trial to begin your deliberations. You should not let your note-taking distract you from listening to the witnesses while they are testifying. Hearing the full testimony of the witnesses is more important than taking notes. When you leave at night, please leave your notes in the jury room.

If you do not take notes, you should rely on your own memory of what was said. Do not be overly influenced either by your own notes or by the notes of other jurors. In addition, the jury members cannot assign one person the duty of taking notes for all of you.

INSTRUCTION NO. 9

It is important that as jurors and officers of this court you obey the following instructions at any time you leave the jury box, whether it be for recesses of the court during the day or when you leave the courtroom to go home at night.

First, do not talk about this case either among yourselves or with anyone else during the course of the trial. You should keep an open mind throughout the trial and not form or express an opinion about the case. You should only reach your decision after you have heard all of the evidence, after you have heard my final instructions and after the final arguments. You may discuss this case with the other members of the jury only after it is submitted to you for your decision. All discussions should take place in the jury room.

Second, do not let any person talk about this case in your presence. If anyone does talk about it, tell them you are a juror on the case. If they won't stop talking, report that to the bailiff as soon as you are able to do so. You should not tell any of your fellow jurors that someone has talked to you about the case.

Third, during this trial do not talk with any of the parties, their lawyers or any witnesses. By this, I mean not only do not talk about the case, but do not talk at all, even to pass the time of day, other than to say "hello". Only by avoiding any conversation at all can all parties be assured of the fairness they are entitled to expect from you as jurors.

Fourth, during this trial do not make any investigation of this case or inquiry outside of the courtroom on your own. Do not go any place mentioned in the testimony without an explicit order from me to do so. You must not consult any books, dictionaries, encyclopedias or any other source of information unless I specifically authorize you to do so.

Fifth, do not read about the case in the newspapers. Do not listen to the radio or television broadcasts about the trial. You must base your verdict solely on what is presented in court and not upon any newspaper, radio, television or other account of what may have happened.

INSTRUCTION NO. 10

You have now heard all the evidence in the case. My duty is to instruct you as to the law.

You must follow all the rules as I explain them to you. You may not follow some of the rules and ignore others. Even if you disagree or don't understand the reasons for some of the rules, you are bound to follow them. If anyone states a rule of law different from any that I tell you, it is these instructions that you must follow.

INSTRUCTION NO. 11

As members of the jury it is your duty to decide what the facts are and to apply those facts to the law that I have given you. You are to decide the facts from all the evidence presented in the case.

The evidence you are to consider consists of:

1. sworn testimony of witnesses;
2. exhibits which have been admitted into evidence;
3. any facts to which the parties have stipulated.

Certain things you have heard or seen are not evidence, including:

1. arguments and statements by lawyers. The lawyers are not witnesses. What they say in their opening statements, closing arguments and at other times is included to help you interpret the evidence, but is not evidence. If the facts as you remember them differ from the way the lawyers have stated them, follow your memory;
2. testimony that has been excluded or stricken, or which you have been instructed to disregard;
3. anything you may have seen or heard when the court was not in session.

INSTRUCTION NO. 11A

Each count charges a separate and distinct offense. You must decide each count separately on the evidence and the law that applies to it, uninfluenced by your decision as to any other count. The defendant may be found guilty or not guilty on either or both of the offenses charged.

INSTRUCTION NO. 113

In every crime or public offense there must exist a union or joint operation of act and intent.

INSTRUCTION NO. 12

In order for the defendant to be guilty of Trafficking in Marijuana the State must prove:

1. On or about August 13, 2006
2. in the State of Idaho
3. the defendant, MARK DUANE BEAVERS, did knowingly possess one (1) pound of marijuana or more, or did knowingly possess and/or manufacture twenty-five (25) marijuana plants or more, and
4. knew it was marijuana or believed it was a controlled substance.

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

INSTRUCTION NO. 12A

A person has possession of something if the person knows of its presence and has physical control of it, or has the power and intention to control it. More than one person can be in possession of something if each knows of its presence and has the power and intention to control it.

INSTRUCTION NO. 12B

The term "marijuana" as used in these instructions means all parts of the plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant unless the same are intermixed with prohibited parts thereof, fiber produced from the stalks, oil or cake made from the seeds of the achene of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom or where the same are intermixed with prohibited parts of such plant), fiber, oil, cake, or the sterilized seed of such plant which is incapable of germination.

INSTRUCTION NO. 12C

“Manufacture” means the production, propagation, conversion or processing of a controlled substance, and includes extraction, directly or indirectly, from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container.

INSTRUCTION NO. 12 D

The term "production" in regards to marijuana also includes the growing of a marijuana plant.

INSTRUCTION NO. 12E

A "marijuana plant" must have readily observable evidence of root formation.

INSTRUCTION NO. 12 F

Under Idaho law, marijuana is a controlled substance.

INSTRUCTION NO. 13

In order for the defendant to be guilty of Possession of a Controlled Substance with Intent to Deliver, the State must prove each of the following:

1. On or about August 13, 2006
2. in the State of Idaho
3. the defendant, MARK DUANE BEAVERS, possessed any amount of marijuana,
and
4. the defendant either knew it was marijuana or believed it was a controlled
substance, and
5. the defendant intended to deliver that substance to another.

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

The possession of controlled substances, even in multiple packages, is not sufficient by itself to prove an intent to deliver. The state must prove one or more additional circumstances from which you can infer that intent. The additional circumstances could include, but are not limited to, the possession of controlled substances in quantities greater than would be kept for personal use; or the existence of items customarily used to weight, package, or process controlled substances; or the existence of money and/or records which indicate sales or deliveries of controlled substances.

You are not required to infer an intent to deliver from any such additional circumstances. Whether any such additional circumstances have been proven, whether an intent to deliver should be inferred from them, and the weight to be given such inference are for you to decide. You

should consider all of the evidence when deciding whether the state has proven an intent to deliver beyond a reasonable doubt.

INSTRUCTION NO. 13A

The term "deliver" means the transfer or attempted transfer, either directly or indirectly, from one person to another.

INSTRUCTION NO. 13 B

Evidence of medical need has been admitted as it may be relevant to contest the issue of intent to deliver, which is an element in the count charging Possession of Marijuana with Intent to Deliver, by showing that defendant possessed the marijuana only for his own personal use. Do not consider such evidence for any purpose except the limited purpose for which it was admitted.

INSTRUCTION NO. 14

If you find the defendant guilty of trafficking marijuana you must next determine whether the state has proved beyond a reasonable doubt the weight of the marijuana or the number of marijuana plants possessed or manufactured by the defendant. You will answer this question on the verdict form, and your answer must be unanimous.

INSTRUCTION NO. 14A

If your unanimous verdict is that the defendant is not guilty of Trafficking in Marijuana and is not guilty of Possession of a Controlled Substance with the Intent to Deliver, you must acquit him of those charges. In that event, you must next consider the included offense of Possession of a Controlled Substance.

INSTRUCTION NO. 14B

In order for the defendant to be guilty of Possession of Marijuana, the state must prove:

1. On or about August 13, 2006
2. in the state of Idaho
3. the defendant, MARK DUANE BEAVERS, possessed marijuana in an amount of 3 or more ounces; and
4. knew it was marijuana.

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

INSTRUCTION NO. 15

In this case you will return a verdict, consisting of a series of questions. Although the explanations on the verdict form are self-explanatory, they are part of my instructions to you. I will now read the verdict form to you. It states:

“WE, THE JURY, duly empanelled and sworn to try the above-entitled action, for our verdict, unanimously answer the questions submitted to us as follows:

QUESTION NO. 1: Is defendant, MARK DUANE BEAVERS, not guilty or guilty of TRAFFICKING IN MARIJUANA in the amount of twenty-five (25) pounds or more, not including the marijuana plants?

Not Guilty _____ Guilty _____

If you unanimously answered Question No. 1 "**Not Guilty**", then you must answer Question No. 2. If you unanimously answered Question No. 1 "**Guilty**", then you must skip Question Nos. 2 and 3, and proceed to Question No. 4.

QUESTION NO. 2: Is defendant, MARK DUANE BEAVERS, not guilty or guilty of TRAFFICKING IN MARIJUANA in the amount of five (5) pounds or more, but less than twenty-five (25) pounds, not including the marijuana plants?

Not Guilty _____ Guilty _____

If you unanimously answered Question No. 2 "**Not Guilty**", then you must answer Question No. 3. If you unanimously answered Question No. 2 "**Guilty**", then you must skip Question No. 3, and proceed to Question No. 4.

QUESTION NO. 3: Is defendant, MARK DUANE BEAVERS, not guilty or guilty of TRAFFICKING IN MARIJUANA in the amount of one (1) pound of marijuana or more, or twenty-five (25) marijuana plants or more?

Not Guilty _____ **Guilty** _____

Please proceed to answer Question No. 4.

QUESTION NO. 4: Is defendant, MARK DUANE BEAVERS, not guilty or guilty of POSSESSION OF MARIJUANA WITH INTENT TO DELIVER?

Not Guilty _____ **Guilty** _____

If you unanimously answered Question No. 4 "**Not Guilty**" and answered Question Nos. 1, 2, and 3 "**Not Guilty**", then proceed to answer Question No. 5. Otherwise, please sign, date, and return the verdict form to the bailiff.

QUESTION NO. 5: Is defendant, MARK DUANE BEAVERS, not guilty or guilty of POSSESSION OF MARIJUANA?

Not Guilty _____ **Guilty** _____"

The verdict form then has a place for it to be dated and signed. You should sign the verdict form as explained in another instruction.

INSTRUCTION NO. 16

It is alleged that the crime charged was committed "on or about" a certain date. If you find the crime was committed, the proof need not show that it was committed on that precise date.

INSTRUCTION NO. 17

I have outlined for you the rules of law applicable to this case and have told you of some of the matters which you may consider in weighing the evidence to determine the facts. In a few minutes counsel will present their closing remarks to you, and then you will retire to the jury room for your deliberations.

The attitude and conduct of jurors at the beginning of your deliberations are very important. It is rarely productive at the outset for you to make an emphatic expression of your opinion on the case or state how you intend to vote. When you do that at the beginning, your sense of pride may be aroused, and you may hesitate to change your position even if shown that it is wrong. Remember that you are not partisans or advocates, but are judges. For you, as for me, there can be no triumph except in the ascertainment and declaration of the truth.

As jurors you have a duty to consult with one another and to deliberate before making your individual decisions. You may fairly discuss among yourselves all of the evidence you have seen and heard in this courtroom about this case, together with the law that relates to this case as contained in these instructions.

During your deliberations, you each have the right to re-examine your own views and change your opinion. You should only do so if you are convinced by fair and honest discussion that your original opinion was incorrect based upon the evidence the jury saw and heard during the trial and the law as given to you in these instructions.

Consult with one another. Consider each other's views, and deliberate with the objective of reaching an agreement, if you can do so without disturbing your individual judgment. Each of you must decide this case for yourself; but you should do so only after a discussion and consideration of the case with your fellow jurors.

However, none of you should surrender your honest opinion as to the weight or effect of evidence or as to the innocence or guilt of the defendant just because the majority of the jury feels otherwise or merely for the purpose of returning an unanimous verdict.

INSTRUCTION NO. 18

The original instructions and the exhibits will be with you in the jury room. They are part of the official court record. For this reason please do not alter them or mark them in any way.

The instructions are numbered for the convenience of the Court in referring to specific instructions. You should not concern yourselves about the numbering of the instructions, as the numbers are of no significance. Nor does the order in which the instructions are given have any significance as to their relative importance.

INSTRUCTION NO. 19

You have been instructed as to all the rules of law that may be necessary for you to reach a verdict. Whether some of the instructions apply will depend upon your determination of the facts. You will disregard any instruction which applies to a state of facts which you determine does not exist. You must not conclude from the fact that an instruction has been given that the Court is expressing any opinion as to the facts.

INSTRUCTION NO. 20

Upon retiring to the jury room, select one of you as a presiding juror, who will preside over the deliberations. It is that person's duty to see that discussion is orderly; that the issues submitted for your decision are fully and fairly discussed; and that every juror has a chance to express himself or herself upon each question.

In this case, your verdict must be unanimous. When you all arrive at a verdict, the presiding juror will sign it and you will return it in open court.

Your verdict in this case cannot be arrived at by chance, by lot, or by compromise.

If, after considering all of the instructions in their entirety, and after having fully discussed the evidence before you, the jury determines that it is necessary to communicate with me, you may send a note by the bailiff. You are not to reveal to me or to anyone else how the jury stands until you have reached a verdict or unless you are instructed by me to do so.

A verdict form suitable to any conclusion you may reach will be submitted to you with these instructions.

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,

Plaintiff,

vs.

MARK DUANE BEAVERS,

Defendant.

Case No. CR-06-18813

SPECIAL VERDICT

WE, THE JURY, duly empanelled and sworn to try the above-entitled action, for our verdict, unanimously answer the questions submitted to us as follows:

QUESTION NO. 1: Is defendant, MARK DUANE BEAVERS, not guilty or guilty of TRAFFICKING IN MARIJUANA in the amount of twenty-five (25) pounds or more, not including the marijuana plants?

Not Guilty X Guilty _____

If you unanimously answered Question No. 1 "**Not Guilty**", then you must answer Question No. 2. If you unanimously answered Question No. 1 "**Guilty**", then you must skip Question Nos. 2 and 3, and proceed to Question No. 4.

QUESTION NO. 2: Is defendant, MARK DUANE BEAVERS, not guilty or guilty of TRAFFICKING IN MARIJUANA in the amount of five (5) pounds or more, but less than twenty-five (25) pounds, not including the marijuana plants?

Not Guilty _____ Guilty X

If you unanimously answered Question No. 2 "**Not Guilty**", then you must answer Question No. 3. If you unanimously answered Question No. 2 "**Guilty**", then you must skip Question No. 3, and proceed to Question No. 4.

QUESTION NO. 3: Is defendant, MARK DUANE BEAVERS, not guilty or guilty of TRAFFICKING IN MARIJUANA in the amount of one (1) pound of marijuana or more, or twenty-five (25) marijuana plants or more?

Not Guilty _____ Guilty _____

Please proceed to answer Question No. 4.

QUESTION NO. 4: Is defendant, MARK DUANE BEAVERS, not guilty or guilty of POSSESSION OF MARIJUANA WITH INTENT TO DELIVER?

Not Guilty _____ Guilty X

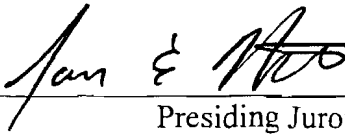
If you unanimously answered Question No. 4 "**Not Guilty**" and answered Question Nos. 1, 2, and 3 "**Not Guilty**", then proceed to answer Question No. 5. Otherwise, please sign, date, and return the verdict form to the bailiff.

QUESTION NO. 5: Is defendant, MARK DUANE BEAVERS, not guilty or guilty of
POSSESSION OF MARIJUANA?

Not Guilty _____ Guilty _____

Please sign, date, and return the verdict form to the bailiff.

Dated this 19 day of June, 2008.



Presiding Juror

KOOTENAI COUNTY SHERIFF'S DEPARTMENT
JAIL BUREAU
INMATE REQUEST FORM (KITE)

STATE OF IDAHO
COUNTY OF KOOTENAI
FILED: *SS*

2008 JUL -7 PM 3:18

MUST BE FILLED OUT COMPLETELY BEFORE REQUEST WILL BE PROCESSED
ONLY ONE REQUEST PER KITE

CLERK *[Signature]*

Inmate's Name: MARC BEAVERS

Date: 7-04-08
DEPUTY
Pod: 47
Cell: 47

Circle One: Medical
Attorney Court Contact
Haircut
Law Library

Grievance
Appeal
Complaint
Request

Chaplain
Classification

06-18813

Explanation: To: Judge Hosack - I would like a
court appointed attorney to be assigned to
file an appeal of my conviction on my
behalf. Since one of the grounds for appeal
will likely be ineffective counsel, I believe
Martin Neils would be an inappropriate choice.

Inmate's Signature: Marc O Beavers

Receiving Deputy: [Signature] ID# 2312 Date/Time 7-4-08 1010

THIS REQUEST IS NULL AND VOID IF INMATE WRITES BELOW THIS SPACE

ACTION

Routed to: Court
(to be filled in by Deputy receiving request form)

Answer: [] Approved [] Denied

Reason: _____

Responding Staff Signature: _____ ID# _____ Date _____

Copy to File _____ Copy to Inmate _____

565

Court Minutes:

Session: HOSACK080808P
Session Date: 08/08/2008
Judge: Hosack, Charles
Reporter: Schaller, Joann

Division: DIST
Session Time: 13:48

Courtroom: Courtroom8

Clerk(s): Rohrbach, Shari

State Attorney(s):
Gardner, Donna
Greenbank, Shane
Wick, Ann

Public Defender(s):
Reuter, Dennis
Taylor, Anne

Prob. Officer(s):

Court interpreter(s):

Case ID: 0001

Case number: CR2007-27416

Plaintiff:

Plaintiff Attorney:

Defendant: Beavers, Mark

Pers. Attorney:

Co-Defendant(s):

State Attorney: Wick, Ann

Public Defender: Taylor, Anne

08/08/2008

14:26:32

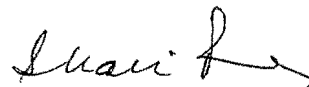
Recording Started:

14:26:32

Case called

14:27:31

Judge: Hosack, Charles
Call,s def present. PTC.



14:27:38 **State Attorney: Wick, Ann**

14:27:48 **Public Defender: Taylor, Anne**

14:28:05 Move to continue.

14:28:16 **State Attorney: Wick, Ann**
Defer to the court, I know the basis.

14:28:22 **Judge: Hosack, Charles**
Mr Beavers continuing a request, grant. Reset 4
day jury to Sept 8 @ 9:00,

14:29:06 trial Sept 9.

14:29:50 **Stop recording**

Court Minutes:

Session: HOSACK090808A
Session Date: 09/08/2008
Judge: Hosack, Charles
Reporter: Schaller, Joann

Division: DIST
Session Time: 09:00

Courtroom: Courtroom9

Clerk(s): Rohrbach, Shari

State Attorney(s):
Gardner, Donna
Greenbank, Shane
Reierson, James
Swenson, Blake

Public Defender(s):
Chapman, Brad
Neils, Martin
Nelson, Lynn
Reuter, Dennis
Taylor, Anne

Prob. Officer(s):

Court interpreter(s):

Case ID: 0001

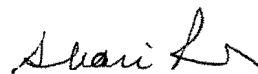
Case number: CR2007-27416
Plaintiff:
Plaintiff Attorney:
Defendant: Beavers, Mark
Pers. Attorney:
Co-Defendant(s):
State Attorney: Swenson, Blake
Public Defender: Nelson, Lynn

09/08/2008

09:49:31

Recording Started:

09:49:31



Case called

09:49:59 **Judge: Hosack, Charles**
Calls, def in custody. PTC.

09:50:13 **State Attorney: Swenson, Blake**

09:50:23 **Public Defender: Nelson, Lynn**
Ask continuance, there are witnesses we wish to
put on that we need to
09:50:52 contact. This case was recently assigned to Ms
Anderson.

09:51:10 **Judge: Hosack, Charles**
There is an indication of a waiver, reviews
file. Inquires of def regarding
09:51:46 waiver of speedy.

09:51:51 **Defendant: Beavers, Mark**
Waiving speedy is not my recollection.

09:53:00 **Judge: Hosack, Charles**
The court minutes from back in April indicates
we did discuss waiver of
09:53:16 speedy. This is the 3-4 request for continuance
which would be a waiver. Are
09:53:48 you ready to go to trial tomorrow?

09:53:58 **Defendant: Beavers, Mark**
No, I don't think so.

09:54:03 **Judge: Hosack, Charles**
The request for continuance would be a wiaver.

09:54:14 **Defendant: Beavers, Mark**
Comments. I've been incarcerated since Nov 2007.
I've made every effort to
09:54:37 get information for attorneys. This has been a
problem. I've never knowingly,
09:55:30 waived right to speedy. I'm between a rock and a
hard place. I've never
09:56:07 wiaved my right, but would like my defense to be
ready.

09:56:30 **State Attorney: Swenson, Blake**

The state is not ready to go to trial tomorrow,
but are ready for next week.

09:56:47 **Judge: Hosack, Charles**
How does the defense wish to proceed? Can
proceed next Mon.

09:56:59 **Public Defender: Nelson, Lynn**
Request to talk to def.

09:57:22 **Judge: Hosack, Charles**
If he wants to go to trial this month we can do
that. At the moment we will

09:57:38 trail this and take up on Sept 15.

09:58:20 **Stop recording**

FILED 4-15-08 AT 11:58A M.
STATE OF IDAHO, COUNTY OF KOOTENAI SS
CLERK OF THE DISTRICT COURT

BY Shari L DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,)	CASE NO: CR07-27416
)	
Plaintiff,)	
	)	ORDER TO CONTINUE
vs.	)	JURY TRIAL
)	
MARK BEAVERS,)	
Defendant,)	
_____)	


The Court set the above matter for a pretrial conference on September 8, 2008. Lynn Nelson, Chief Deputy Public Defender, appeared with the defendant, and Blake Swenson appeared on behalf of the State. After hearing the Motion to Continue the Jury Trial made by defense attorney Lynn Nelson, for the reason that their expert witness had not been scheduled, and the State having entered their objection to a continuance of the jury trial, and good cause appearing;

IT IS THE FINDING OF THE COURT that the defendant is still requesting the testimony of an expert witness, therefore the defense is unable to proceed to jury trial as their expert witness is not available. The Court grants the Motion to Continue the Jury Trial.

FURTHER THE COURT FINDS that the granting of the motion would waive the right to speedy trial, but no specific finding is necessary as the defendant has previously waived the right to speedy trial, based on the previous motions to continue made by defendant and granted by the Court.

IT IS HEREBY ORDERED that the jury trial is continued to October 14, 2008 at 9:00 a.m., with a pretrial conference to be held on October 9, 2008, at 2:30 p.m.

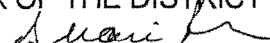
DATED this 15 day of September, 2008.


Charles W. Hosack, District Judge

Clerk's Certificate of Mailing

I hereby certify that on the 15 day of September, 2008 that a true and correct copy of the foregoing was mailed, or Faxed to:

Fax Kootenai County Prosecuting Attorney (Fax: 208-446-1833)
Fax Defense Attorney Staci Anderson (Fax: 208-446-1701)

DANIEL J. ENGLISH
CLERK OF THE DISTRICT COURT
BY: 
Deputy Clerk

ORIGINAL

WILLIAM J. DOUGLAS
Prosecuting Attorney
501 Government Way/Box 9000
Coeur d'Alene, ID 83816-9000
(208) 446-1800

ASSIGNED ATTORNEY:
ANN WICK

STATE OF IDAHO }
COUNTY OF KOOTENAI } ss
FILED:

188

2008 SEP 11 AM 10:52

CLERK DISTRICT COURT

DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,

Plaintiff,

vs.

MARK D. BEAVERS,

Defendant.

Case No. **CR-F07-27416**

MOTION TO CONTINUE TRIAL

COMES NOW, ANN WICK, Deputy Prosecuting Attorney, in and for Kootenai County, State of Idaho, and hereby moves the Court for an Order to continue the trial scheduled for September 15, 2008, before Judge Hosack.

This Motion is made because Forensic Services Technician Anne Nord is a necessary witness and will be out of state September 15, 2008, for a symposium. A copy of Ms. Nord's subpoena noting the dates of her unavailability is attached.

DATED this 11th day of September, 2008.

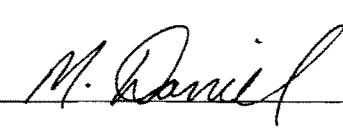

ANN WICK

Deputy Prosecuting Attorney

CERTIFICATE OF MAILING

I hereby certify that on the 11th day of September, 2008, a true and correct copy of the foregoing was mailed, faxed, and/or hand-delivered by interoffice mail to:

PUBLIC DEFENDER
FAX: 446-1701



MOTION TO CONTINUE TRIAL

573

Court Minutes:

Session: HOSACK100908P
Session Date: 10/09/2008
Judge: Hosack, Charles
Reporter: Schaller, Joann

Division: DIST
Session Time: 14:13

Courtroom: Courtroom9

Clerk(s): Rohrbach, Shari

State Attorney(s):
Gardner, Donna
Laird, Terri
Raap, Marty
Swenson, Blake
Whipple, David
Wick, Ann

Public Defender(s):
Anderson, Staci
Chapman, Brad
Nelson, Lynn
Reuter, Dennis
Schwartz, Christopher

Prob. Officer(s):

Court interpreter(s):

Case ID: 0021

Case number: CR2007-27416

Plaintiff:

Plaintiff Attorney:

Defendant: Beavers, Mark

Pers. Attorney:

Co-Defendant(s):

State Attorney: Raap, Marty

Public Defender: Anderson, Staci

10/09/2008

17:07:28

Recording Started:

17:07:28

Case called

17:07:34

Judge: Hosack, Charles
Calls, def in custody PTC.

17:07:43

Public Defender:

17:07:46

Public Defender: Anderson, Staci
Ask second week, explains.

17:08:18

State Attorney: Raap, Marty
Ask end of second week for Beavers, officer is
not available on Oct 20.

17:09:10

Judge: Hosack, Charles
Bright is set for next week, trail Anderson to
Oct 20, and Beavers to Oct 21.

17:09:40

17:10:49

Stop recording

ORIGINAL

STATE OF IDAHO
COUNTY OF KOOTENAI
FILED: ^{SS}

WILLIAM J. DOUGLAS
Prosecuting Attorney
501 Govt. Way/Box 9000
Coeur d'Alene, ID 83814
Telephone: (208) 446-1800

2008 OCT 27 PM 4: 22

CLERK DISTRICT COURT
[Signature]
DEPUTY

ASSIGNED ATTORNEY:
ANN WICK

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI


STATE OF IDAHO,)	
	)	CASE NO. CRF07-27416
Plaintiff,)	
)	
vs.	)	MOTION IN LIMINE
)	
MARK BEAVERS,)	
)	
Defendant.)	
_____)	

COMES NOW, ANN WICK, Deputy Prosecuting Attorney for Kootenai County, and hereby moves this Honorable Court for its Order precluding the defense in this matter from introducing or arguing the following impermissible topics at trial:

1. Any medical "diagnosis" or other assessment that the Defendant needs or would otherwise benefit from the use of marijuana.
2. Any real or purported documentation of medical "authorization" to possess or use marijuana for medical purposes.

This Motion is made based on I.R.E. 401, 402, and 403.

Dated this 27th day of Oct., 2008.




ANN WICK
Deputy Prosecuting Attorney

CERTIFICATE OF MAILING

I hereby certify that on the 27 day of Oct., 2008, a true and correct copy of the foregoing MOTION IN LIMINE was mailed, faxed, and/or hand-delivered to:

Staci Anderson
Deputy Public Defender



WILLIAM J. DOUGLAS
Prosecuting Attorney
501 Govt. Way/Box 9000
Coeur d'Alene, ID 83814
Telephone: (208) 446-1800

ASSIGNED ATTORNEY:
ANN WICK

STATE OF IDAHO }
COUNTY OF KOOTENAI } SS
FILED:

2008 OCT 27 PM 4: 21


DISTRICT COURT
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,)	
	)	CASE NO. CRF07-27416
Plaintiff,)	
	)	SECOND
vs.	)	MOTION IN LIMINE
)	
MARK BEAVERS,)	
)	
Defendant.)	
_____)	

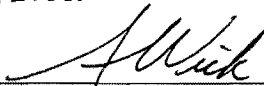
COMES NOW, ANN WICK, Deputy Prosecuting Attorney for Kootenai County, and hereby moves this Honorable Court for its Order precluding the defense in this matter from introducing or arguing the following impermissible topic(s) at trial:

The *Franks* hearing held in Kootenai County Case No. F06-18813, including the Court's findings upon conclusion of the *Franks* hearing.

This Motion is primarily made based on I.R.E. 401, 402, and 403. The *Franks* hearing was held in the context of a different case, and no evidence was suppressed or excluded in that case as a result of the hearing. The present charges do not rest on the evidence at issue in the

Franks hearing in F06-18813. Finally, if the Defendant were allowed to mention the *Franks* hearing during the course of a jury trial in this matter, the Court would effectively be allowing the jury to hear the Court's comments on the evidence and credibility of a particular witness, which is clearly prohibited.

Dated this 27th day of Oct., 2008.




ANN WICK
Deputy Prosecuting Attorney

CERTIFICATE OF MAILING

I hereby certify that on the 27 day of Oct., 2008, a true and correct copy of the foregoing MOTION IN LIMINE was faxed, mailed and/or hand-delivered to:

Staci Anderson
Deputy Public Defender



WILLIAM J. DOUGLAS
Prosecuting Attorney
501 Govt. Way/Box 9000
Coeur d'Alene, ID 83814
Telephone: (208) 446-1800

2008 OCT 27 PM 4: 22

CLERK DISTRICT COURT
Ann Wick
DEPUTY

ASSIGNED ATTORNEY:
ANN WICK

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,)
)
Plaintiff,)
)
vs.)
)
MARK BEAVERS,)
)
Defendant.)
_____)

CASE NO. **CRF07-27416**

**MEMORANDUM IN SUPPORT OF
MOTION IN LIMINE**

Defendant Beavers is charged with one count of Delivery of Marijuana, one count of Possession with Intent to Deliver Marijuana, and one count of Trafficking in Marijuana, violations of I.C. §§ 37-2732 and 37-2732B. Earlier this year he was tried on 2006 charges of Trafficking in Marijuana and Possession with Intent to Deliver Marijuana, whereby it was alleged that he possessed at least 25 pounds of loose or harvested marijuana and at least 25 marijuana plants. A jury found Defendant guilty of Trafficking in Marijuana and Possession with Intent to Deliver Marijuana.

At trial, Defendant testified that he, indeed, had both harvested marijuana and growing marijuana plants at his house, but that he needed the marijuana to treat his self-diagnosed medical conditions. He testified that, for a period of time well before his crimes in 2006, he thought he might

have cancer and be dying, and that marijuana seemed to be the only thing really helping his condition. He claimed that he did not have the financial resources to obtain medical care but admitted that he never sought treatment at either an emergency room or low-income/free clinic. He further admitted that during all relevant times he managed to pay the mortgage on his house, acquired two vehicles and a fixer-upper boat, regularly deposited over \$1000/month into his bank accounts, and purchased and improved real property in Washington. Defendant then requested a jury instruction allowing the jury to find him not guilty of the charged crimes if it found Defendant had committed the crimes out of necessity.

Although the Court had allowed, over the State's objection, Defendant to testify to his claimed necessity, the Court found after said testimony and the close of Defendant's case that Defendant had not sufficiently raised the affirmative defense of necessity. Defendant's requested instruction on necessity was denied, and the State was granted its request for an instruction limiting the jury's consideration of Defendant's testimony to that which could negate the intent element in the Possession with Intent to Deliver charge.

The State anticipates that Defendant will again exercise his right to testify in the present case and will again attempt to argue that he is not guilty of the charged offenses by virtue of his purported medical authorization from Washington and his self-reported "need" to use marijuana. For the reasons discussed below, the defense should be precluded from introducing these topics at trial.

ARGUMENT

The topic of any medical "authorization" or need to use or possess marijuana is not relevant to the determination of whether or not Defendant is guilty of the charged offenses, as medical

necessity/authorization is not a defense to the charged offenses. Moreover, because medical necessity/authorization is not a defense in Idaho, to allow Defendant to present evidence on this topic would be unfairly prejudicial and would lead to confusion of the issues and misleading of the jury.

Relevant evidence is defined as “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” I.R.E. 401. Even relevant evidence, however, may be excluded if its probative value is “substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading of the jury.” I.R.E. 403.

As indicated above, Defendant Beavers is charged with delivering, possessing with the intent to deliver, and trafficking in marijuana, violations of I.C. §§ 37-2732 and 37-2732B. Medical necessity is not a defense to these crimes. See State v. Tadlock, 136 Idaho 413, 34 P.3d 1096 (Ct. App. 2001). An individual is not any less criminally responsible for these crimes if he or she has a “medical authorization” to possess marijuana for medical purposes, especially where the purported “authorization” is specifically limited to Washington State. Because medical necessity/authorization is not a defense to the charged offenses, evidence of medical necessity/authorization does not meet the definition of relevant evidence. Moreover, because such evidence would give a jury the impression that it could somehow consider such evidence in reaching a determination on Defendant’s guilt, when a jury clearly can not, admission of such evidence would be unfairly prejudicial and almost certainly lead to confusion of the issues and misleading of the jury.

Defendant will likely suggest to the Court that, because simple possession of marijuana is an included offense of possession with intent to deliver, and arguably an included offense of even

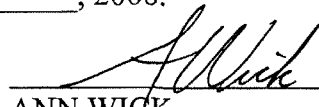
trafficking, he is entitled to an instruction on the affirmative defense of necessity. As a matter of law, the Court agreed, largely relying on Tadlock. Consequently, the Court allowed Defendant to testify and reserved ruling on whether or not the jury could consider a necessity defense until after the Defendant had presented his case. After hearing Defendant's evidence, however, the Court agreed with the State and found that, as a matter of fact, Defendant was not entitled to have the jury consider a necessity defense, and a limiting instruction was therefore required.

Even if an affirmative necessity defense can as a matter of law be raised against charges of trafficking, delivery, and possession with intent to deliver, a position with which the State disagrees, Defendant should nevertheless be barred from testifying to a purported medical authorization or need of marijuana in this case. There is no reason to believe Defendant's testimony will be materially different in this case than it was in the 2006 case. A court has ruled that Defendant's evidence does not satisfy the elements of a necessity defense. Consequently, to allow the Defendant to testify in support of a necessity defense serves only to appeal to the sympathies of the jury and will unfairly prejudice the State's case, lead to confusion of the issues, and mislead the jury.

CONCLUSION

For these reasons, Defendant should be precluded from mentioning the above-referenced topics at Trial in this matter, and the Court should enter an appropriate order to that effect.

Dated this 21st day of Oct., 2008.



ANN WICK
Deputy Prosecuting Attorney

CERTIFICATE OF MAILING

I hereby certify that on the 27 day of oct., 2008, a true and correct copy of the foregoing MOTION IN LIMINE was faxed, mailed and/or hand-delivered to:

Staci Anderson
Deputy Public Defender

M. Daniel

KOOTENAI COUNTY SHERIFF'S DEPARTMENT
JAIL BUREAU
INMATE REQUEST FORM (KITE)

102228
STATE OF IDAHO
COUNTY OF KOOTENAI
FILED: 188

MUST BE FILLED OUT COMPLETELY BEFORE REQUEST WILL BE PROCESSED
ONLY ONE REQUEST PER KITE

Inmate's Name: MARK D. BEAVERS

Date: 10/24/08

Pod: 47

Cell: 47

Circle One: Medical
Attorney Court Contact
Haircut
Law Library

Grievance
Appeal
Complaint
Request

Chaplain
Classification

F06-18813

F07-27416

Explanation: Honorable Judge John P. Luster

I HAVE just RECEIVED notice of A Jury Trial Conference
AND possibly a Jury Trial scheduled to begin on Tuesday,
October 28, 2008 AT 9:00 AM before Judge Reinhardt.
The Jury Trial is scheduled to last for (four) 4 days. I
have a hearing scheduled in ~~the~~ your courtroom on
Friday, October 31, 2008 AT 8:00 AM. If my case
before Judge Reinhardt goes to trial, I will have
A scheduling conflict. PLEASE ADVISE.

Inmate's Signature: Mark D Beavers

Receiving Deputy: S. Linn

ID# 2246 Date/Time 10/25/08

THIS REQUEST IS NULL AND VOID IF INMATE WRITES BELOW THIS SPACE

ACTION

Routed to: _____

(to be filled in by Deputy receiving request form)

Answer: ☐ Approved ☐ Denied

Reason: _____

Responding Staff Signature: _____

ID# _____ Date _____

Copy to File _____ Copy to Inmate _____

585

WILLIAM J. DOUGLAS
Prosecuting Attorney
501 Govt. Way/Box 9000
Coeur d'Alene, ID 83816-9000
Telephone: (208) 446-1800
Fax: (208) 446-1840

ASSIGNED ATTORNEY:
ANN WICK

STATE OF IDAHO } ss
COUNTY OF KOOTENAI
FILED: 10-28-08
AT 10 O'CLOCK AM
CLERK, DISTRICT COURT
Charmane McWeth
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,)	
	)	Case No. CR-F07-27416
Plaintiff,)	
	)	AMENDED
vs.	)	INFORMATION
)	
MARK DUANE BEAVERS,)	
DOB: [REDACTED])	
SSN: [REDACTED])	
)	
Defendant.)	

WILLIAM J. DOUGLAS, Prosecuting Attorney, in and for the County of Kootenai, State of Idaho, who prosecutes in its behalf, comes now into Court, and does accuse **MARK DUANE BEAVERS**, of the charges of **COUNT I, DELIVERY OF A CONTROLLED SUBSTANCE, I.C. §§37-2732(a), 37-2739A, 37-2739, 19-2514, COUNT II, POSSESSION OF A CONTROLLED SUBSTANCE WITH THE INTENT TO DELIVER, I.C. §§37-2732(a)(1)(B), 37-2739, 19-2514,** and **COUNT III, TRAFFICKING IN MARIJUANA, a Felony, I.C. §§37-2732B(a)(1)(A), 37-2739B, 19-2514, 18-204**, committed as follows:

Or
10-30-08

AMENDED INFORMATION: Page 1

COUNT I

That the Defendant, **MARK DUANE BEAVERS**, on or about the 21st day of November, 2007, in the County of Kootenai, State of Idaho, did unlawfully and knowingly deliver a controlled substance, to-wit: Marijuana, a Schedule I controlled substance, to Idaho State Police Detective Julie Morgan, and

COUNT II

That the Defendant, **MARK DUANE BEAVERS**, on or about the 21st day of November, 2007, in the County of Kootenai, State of Idaho, did unlawfully and knowingly possess a controlled substance, to-wit: Marijuana, a Schedule I controlled substance, with the intent to deliver the aforementioned controlled substance, and

COUNT III

That the Defendant, **MARK DUANE BEAVERS**, on or about the 21st day of November, 2007, in the County of Kootenai, State of Idaho, did knowingly possess twenty-five (25) or more marijuana plants, and/or did aid and abet another in so doing, all of which is contrary to the form, force, and effect of the statute in such case made and provided for and against the peace and dignity of the People of the State of Idaho.

PART II

The State further informs the Court that the Defendant, **MARK DUANE BEAVERS**, has previously committed a violation of the Uniform Controlled Substances Act and/or a violation of an Idaho Statute relating to narcotic drugs, marijuana, depressant, stimulant, and/or hallucinogenic drugs, to-wit: Kootenai County Case No. CR-F06-18813, which makes Defendant eligible to receive a sentence up to twice the sentence otherwise authorized, pursuant to I.C. §37-2739.

AMENDED INFORMATION: Page 2

PART III

The State further informs the Court that the Defendant, **MARK DUANE BEAVERS**, has within the last ten (10) years committed one or more felony offenses of dealing, selling, or trafficking in controlled substances on an occasion different from the charge alleged in Count I, to-wit: Kootenai County Case No. CR-F06-18813, which requires any sentence imposed upon a conviction of Count I, Delivery, to include a mandatory minimum fixed term of imprisonment that shall run consecutively to any other sentence imposed, pursuant to I.C. §37-2739A.

PART IV

The State further informs the Court that the Defendant, **MARK DUANE BEAVERS**, has previously committed a trafficking offense, to-wit: Kootenai County Case No. CR-F06-18813, which requires that any sentence imposed upon a conviction of Count III to include a mandatory minimum fixed term of imprisonment that is twice that otherwise required, pursuant to I.C. §37-2739B(a)(7).

gr 10-30-08


PART V

The State further informs the Court that the Defendant, **MARK DUANE BEAVERS**, while committing the offenses of **COUNT I, DELIVERY OF A CONTROLLED SUBSTANCE**, a Felony, **I.C. §37-2732(a)**, **COUNT II, POSSESSION OF A CONTROLLED SUBSTANCE WITH THE INTENT TO DELIVER**, a Felony, **I.C. §37-2732(a)(1)(B)**, and **COUNT III, TRAFFICKING IN MARIJUANA**, a Felony, **I.C. §§37-2732B(a)(1)(A), 18-204**, as charged in the Information, had been previously convicted with at least two (2) separate felony offenses, and pursuant to I.C. §19-2514 is properly considered a persistent violator. Defendant's previous convictions consist of the following felony offenses:

AMENDED INFORMATION: Page 3

Trafficking in Marijuana, I.C. §37-2732B, and Possession of a Controlled Substance with the
Intent to Deliver, I.C. §37-2732(a)(1)(B), Kootenai County, State of Idaho, Case No. CR-F06-18813.

DATED this 27th day of October, 2008.



ANN WICK
Deputy Prosecuting Attorney

CERTIFICATE OF MAILING

I hereby certify that on the 27 day of October, 2008, a true and correct copy of the
foregoing was mailed to:

PUBLIC DEFENDER
FAX: 446-1701

MARK DUANE BEAVERS
C/O KCPSB



Court Minutes:

Session: REINHARDT102808A
Session Date: 10/28/2008
Judge: Reinhardt, George
Reporter: Veare, Keri

Division: DIST
Session Time: 08:36

Courtroom: Courtroom1

Clerk(s): Mollett, Charmaine

State Attorney(s):

Public Defender(s): Anderson, Staci

Prob. Officer(s):

Court interpreter(s):

Case ID: 0003

Case number: CR-07-27416

Plaintiff:

Plaintiff Attorney:

Defendant: BEAVERS, MARK

Pers. Attorney:

Co-Defendant(s):

State Attorney:

Public Defender: Anderson, Staci

Previous audio and annotations can be found in case: 0002

10/28/2008

10:00:24

Recording Started:

10:00:24

Case recalled

10:00:38

Judge: Reinhardt, George

JURY TRIAL. ANN WICK PA, STACI ANDERSON DA. DEF
PRESENT. DETECTIVE ERIC

10:01:26 PAUL PRESENT. CLERK READS THE INFORMATION AS
CHARGED. INTRODUCES THE COURT
10:04:31 REPORTER. PICKS JURORS. CHOOSES 33 JURORS.
QUESTIONS JURORS.
11:04:49 **State Attorney:**
PA VOIR DIRE. PASS FOR CAUSE.
11:09:03 **Public Defender: Anderson, Staci**
DA VOIR DIRE.
11:30:50 PASS FOR CAUSE.
11:40:59 **Stop recording**
(Off Record)
11:49:14
Recording Started:
11:49:14 **Record**
BEAVERS, MARK
11:49:15 **Judge: Reinhardt, George**
PICKED 10 EACH FOR PRE EMPT CHALLENGES. HAVE
PICKED 13 JURORS. EXCUSES
12:04:55 REMAINING JURORS NOT PICKED. GIVES JURORS
INSTRUCTIONS BEFORE EXCUSING FOR
12:06:50 LUNCH.
12:07:53 **Stop recording**
(On Recess)
12:39:21
Recording Started:
12:39:21 **Record**
BEAVERS, MARK
12:39:27 **Judge: Reinhardt, George**
BACK ON RECORD.
12:39:40 **State Attorney:**
I WAS ADVISED MS. JOHNSON HAS A PAST FELONY
CHARGE.
12:40:11 **Stop recording**
(On Recess)

12:50:47 Recording Started:

12:50:47 **Record**
BEAVERS, MARK

12:50:49 **Judge: Reinhardt, George**
BACK ON THE RECORD. MR. BEAVERS AND MS. JOHNSON
HAVE BOTH BEEN CONVICTED OF

12:51:18 FELONIES. WON'T BE ADMISSABLE BY EITHER SIDE.
BOTH PARTIES HAVE STIPULATED.

12:51:57 **Stop recording**
(On Recess)

13:05:43 Recording Started:

13:05:43 **Record**
BEAVERS, MARK

13:05:46 **Judge: Reinhardt, George**
BACK ON THE RECORD. JURY NOT PRESENT. DEF PLANS
TO SUBMIT EVIDENCE TO SHOW

13:06:21 THE JURY HE USES MARIJUANA FOR MEDICAL
PURPOSES. HIS CONDUCT WILL BE

13:07:31 SUFFICIENT EVIDENCE HE USES FOR MEDICAL
PURPOSES. IF HE DOESN'T HAVE

13:08:14 SUFFICIENT EVIDENCE IT WON'T BE ADMISSABLE.

13:08:56 **Public Defender: Anderson, Staci**
THIS COMES ON THE HEEL OF THE LATE FILINGS FROM
THE STATE. THE STATE HAS

13:09:29 KNOWN ALL ALONG ABOUT MY CLIENT PUTTING ON HIS
EVIDENCE. THIS IS AN

13:10:05 AFFIRMATIVE DEFENSE. QUOTES ANOTHER RULE. THE
STATES LATE FILING IS NOT

13:11:06 ENOUGH TIME FOR ME TO PREPARE. MR. BEAVERS
NEEDS TO PUT ON HIS DEFENSE TO

13:12:08 THE JURY. THE OTHER CASE THE EVIDENCE WAS PUT ON
IN FRONT OF THE JURY.

13:13:17 **Judge: Reinhardt, George**
THERE'S A POSSIBILITY THE RULING ON THIS CASE
COULD BE THE SAME AS HIS LAST

13:13:48 CASE.

13:13:59 **Public Defender: Anderson, Staci**
THIS IS A 12B MOTIOIN. DON'T BELIEVE THE LATE
FILING IS FAIR TO MR. BEAVERS

13:15:04 TO PUT ON HIS DEFENSE. THIS SHOULD HAVE BEEN
DECIDED ALONG TIME AGO.

13:16:12 **Judge: Reinhardt, George**
IT SHOULD HAVE BEEN DECIDED ALONG TIME AGO. I
WON'T REQUIRE YOU TO DO THIS

13:16:36 IN AN HOUR AND A HALF. I WON'T LIMIT YOU TO PUT
ON YOUR DEFENSE OUTSIDE

13:17:21 THE PRESENSE OF THE JURY.

13:17:47 **Public Defender: Anderson, Staci**
I NEED A FEW MINUTES TO SPEAK WITH MY CLIENT.

13:18:23 **Stop recording**
(Off Record)

13:21:31
Recording Started:

13:21:31 **Record**
BEAVERS, MARK

13:21:33 **Public Defender: Anderson, Staci**
IT'S THE COURTS DECISION THAT WE'LL HAVE THIS
OUTSIDE THE PRESENSE OF THE

13:22:07 JURY, THAT HEARING.

13:22:45 **Stop recording**
(On Recess)

14:34:19
Recording Started:

14:34:19 **Record**
BEAVERS, MARK

14:34:22 **Judge: Reinhardt, George**
JURY PRESENT AND IN PLACE. READS PRELIMINARY
INSTRUCTIONS.

14:46:06 **State Attorney:**
PA OPENING STATEMENT.

14:59:14 **Stop recording**
(Off Record)

15:03:03
Recording Started:

15:03:03 **Record**
BEAVERS, MARK

15:03:06 **Public Defender: Anderson, Staci**

15:07:49 **Judge: Reinhardt, George**
CALLS FIRST WITNESS

15:08:35 **Other: PAULL, ERIC**
PA DX 10.5 YRS WITH THE POLICE DEPT. I'M A
DETECTIVE. WAS A PATROL
15:09:13 OFFICER BEFORE. WAS A PATROL OFFICER FOR ABOUT 6
YEARS. WENT TO NIC LAW
15:10:02 ENFORCEMENT TRAINING. POST CERTIFIED. DID FIELD
TRAINING. I HAVE BEEN A FIELD
15:10:46 TRAINING OFFICER MYSELF. HAD DRUG RECOGNITION
TRAINING ALSO. HAD A BUNCH OF
15:11:18 SPECIALIZED TRAINING. HAVE HAD EXTENSIVE
TRAINING. HAVE GONE TO SEVERAL
15:11:59 SCHOOLS. I'M A GENERAL DETECTIVE AND A CANINE
OFFICER. TAKE TIPS AND RESEARCH
15:12:34 THEM. DO SEARCH WARRANTS. I USE EITHER AN
UNDERCOVER OFFICER OR AN INFORMANT.
15:13:21 I HAVE DONE UNDERCOVER WORK ALSO. HAVE BEEN
INVOLVED IN ASSISTING OTHER
15:14:16 OFFICERS. BEEN INVOLVED IN HUNDREDS OF DIFFERENT
CASES. INDICATORS OF SOMEONE
15:15:08 SELLING MARIJUANA IS A LOT OF TRAFFIC COMING AND
GOING, CASH, SCALES,
15:15:43 LEDGERS, PACKAGING MATERIALS. I AM FAMILIAR
WITH MARIJUANA. I HAVE HANDLED
15:16:30 IT BEFORE. HANDLE MARIJUANA ROUTINELY TO TRAIN
MY DOG, WHEN I'VE MADE ARRESTS
15:17:12 ETC. MARIJUANA IS VERY SPECIFIC IN ORDER. LEAVES
AND THE BUDS ARE PRETTY
15:17:41 IDENTIFIABLE. CAN USE ARTIFICIAL KIND OF LIGHTS
OR NATURAL OUTDOOR LIGHT.
15:19:13 NOVEMBER 2007 I GOT A TIP FROM KATHY JOHNSON.
SHE'S A CI. SHE CALLED ME

15:19:49 ABOUT MR. BEAVERS. TALKED TO HER AROUND 50
TIMES. I MET WITH HER IN PERSON.
15:20:46 SHE WAS PAID. THERE'S A SET FEE. SHE WAS
GUARENTEED PAYMENT. SGT VICKI
15:22:08 CARLOCK WAS AT ONE OF THE MEETINGS. FIRST CALL
MADE TO MR. BEAVERS ON
15:22:35 11-7-07. MS. JOHNSON MADE THE CALLS. SGT
KARLOCK WAS PART OF THE
15:23:08 INVESTIGATION. SHE WAS GIVEN VERY MINIMAL
INSTRUCTIONS ON WHAT TO SAY TO MAR.
15:23:40 BEAVERS. SHE HELPED CREATE THE STORY. SHE SET UP
A MEETING WITH MR. BEAVERS
15:24:20 AT STARBUCKS IN POST FALLS. WE DECIDED JULIE
WOULD BE A BETTER FIT SO WE USED
15:24:53 HER. MS. JOHNSON WAS FIT WITH A BODY WIRE. IT
WAS CONCEALED. IT'S A SMALL
15:25:24 DIGITAL RECORDING. DETECTIVE MORGAN WAS GIVEN
\$300.00 FOR THE BUY. I WENT
15:26:22 TO THE MEETING PLACE ALONG WITH THE SURVELENCE
CREW, SPECIAL AGENT FROM THE
15:26:49 FBI, DET BERGER, DET SGT TURNER. THERE WAS ALOT
OF PEOPLE THERE. THERE WAS
15:27:28 SAFETY CONCERNS FOR EVERYONE INVOLVED. CIRCLED
THE PARKING LOTS AROUND
15:27:58 STARBUCK'S. WE WERE AT STARBUCKS FOR ABOUT A
HALF AN HOUR. I WAS MONITORING
15:28:49 THE BODY WIRE. I NOTIFIED THE SURVILENCE TEAM TO
GO IN AND MAKE AN ARREST.
15:29:40 MR BEAVERS WAS PULLED OVER. HE WAS DRIVING AN
OLDER MODEL MERCEDES. TAN IN
15:30:18 COLOR. WE CHECKED THE TRUNK. OBSERVED A SUITCASE
WITH SOME CLOTHING, SOME
15:30:45 BAGGIES AND SOME JARS. SOME MARAJUANA. EXHIBIT
10 ADMITTED. I RETURNED TO THE
15:32:02 P.D. WITH THE INFORMANT. HAD A BRIEF DEBRIEFING.
COLLECTED THE BODY WIRE AND
15:32:30 THE EVIDENCE. THE EVIDENCE WAS IN A COFFEE CUP.
IT WAS PUT IN THE EVIDENCE
15:33:04 STORAGE. I TOOK PART IN THE SEARCH WARRANT. WENT
TO 847 N. 22ND PLACE TO
15:33:28 SEARCH THE HOUSE. WENT THROUGH THE ENTIRE HOUSE
AND PROPERTY. SPLIT ENTRY
15:34:00 HOUSE WITH AN ATTACHED 3 CAR GARAGE. EXHIBIT 11,
PICTURE OF MR. BEAVERS
15:34:34 HOUSE. EXHIBIT 11 ADMITTED. HOUSE WAS SECURED
FOR SAFETY, THEN CERTAIN

15:35:29 PORTIONS OF THE HOUSE WERE SEARCHED. THERE WERE
2 GREENHOUSES IN THE BACK
15:35:55 YARD WITH MARAJUANA PLANTS IN THEM. REMOVED
TIMERS, HEATERS, FANS ETC. THERE
15:36:30 WERE 18 PLANTS IN ONE AND MORE IN THE OTHER
GREENHOUSE. DOWNSTAIRS IN THE NW
15:36:58 BEDROOM HAD A GROW ROOM. ALSO IN THE KITCHEN.
REMOVED 49 STARTER PLANTS FROM
15:37:39 THE HOUSE. EXHIBIT 12 AND 13, PICTURES OF THE
MARAJUANA PLANT STARTS. TRAYS OF
15:39:13 STARTS. EXHIBITS 12 AND 13 ADMITTED. HAVE A
VIDEO OF THE RESIDENCE AND
15:40:20 PICTURES WE TOOK. EXHIBITS 14,15,16 ADMITTED.
PICTURES OF THE GREENHOUSES
15:41:46 BEFORE THE PLANTS WERE REMOVED. EXHIBIT 7
ADMITTED, THE VIDEO. I WENT TO THE
15:43:25 JAIL. MET MEMBERS OF THE TEAM THERE. EVIDENCE
WAS TAKEN BY SEVERAL MEMBERS
15:43:55 OF THE TASK FORCE. WAS TAKEN TO THE EVIDENCE
LOCKER. THE CHAIN OF CUSTODY
15:44:40 OFFICERS ONCE THE EVIDENCE IN CHECKED IN. STACIA
TURNER AND LOUISE MARTIN ARE
15:45:01 THE EVIDENCE CUSTODIANS. E th HELAN
PANDSHAD O BE DIRIIIIIIED. THE
15:47:26 PLANTS HAD TO BE DRIED BEFORE GOING IN THE
EVIDENCE LOCKER. EXHIBITS 1,2,
15:48:39 AND 4. MARAJUANA. THIS WAS THE MARAJUANA THAT
WAS SOLD TO THE UNDERCOVER
15:49:33 AGENT. MY SIGNATURE AND SGT MARTINS SIGNATURE ON
THE LABEL. ADMIT EXHIBIT 1.
15:50:19 EXHIBIT 2 WITH MY INITIALS AND BADGE NUMBER.
SEVERAL PACKS OF MARAJUANA.
15:51:19 SEVERAL BAGGIES IN THE LARGE BAG. ZIP LOCK BAGS
WERE REMOVED FROM MR. BEAVERS
15:52:18 CAR. ADMIT EXHIBIT 2.

15:53:44 **Stop recording**
(Off Record)

15:54:23
Recording Started:

15:54:23 **Record**
BEAVERS, MARK

15:54:29 **Other: PAULL, ERIC**

PA DX BACK ON RECORD. EXHIBIT 4. MORE
MARAJUANA. SIGNATURES ON THE LABEL.
15:55:25 PLANTS REMOVED FROM MR. BEAVERS HOME. IT WAS IN
THE GREENHOUSES. ADMIT
15:56:09 EXHIBIT 4. EXHIBITS 17 THRU 21, PHOTOS OF THE
PLANTS AND STARTER PLANTS.
15:58:10 EXHIBITS 17 THRU 21 ADMITTED. THAT WAS A SMALL
SAMPLE OF THE PLANTS COMPARED
15:59:04 TO THE OTHER 30 THAT WAS IN THE GREENHOUSE. THE
PLANTS IN EXHIBIT 4 WAS
15:59:51 QUITE LARGER THEN THE STARTER PLANTS. THEY WERE
ALL MARAJUANA. THERE WAS A
16:00:27 DIGITAL SCALE IN THE HOUSE. DRUGS ARE SOLD BY
WEIGHT. SCALES ARE VERY
16:00:57 COMMONLY USED FOR ACCURACY. THERE WAS PACKAGING
MATERIALS, BAGGIES IN THE
16:01:22 HOUSE. THERE WAS LITERATURE, SCALES, PACKAGING
MATERIALS. DIDN'T FIND ANY
16:02:18 LEDGERS. FOUND MAIL OF MR. BEAVERS IN THE HOUSE.
EXHIBIT 6 IS THE AUDIO OF
16:03:34 THE BODY WIRE CONVERSATIONS. OTHER EXHIBIT IS A
RECORDING CALLS TO MR
16:04:26 BEAVERS. ADMIT EXHIBITS 5 AND 6. MR. PAULL OPENS
LARGE BOX CONTAINING
16:06:12 EXHIBITS. EXPLAINS THE EXHIBIT OF MARAJUANA.
LARGE BOX. THERE IS ALSO STARTER
16:07:55 PLANTS IN THE BOX. ALL THE PLANTS REMOVED FROM
MR. BEAVERS HOUSE AND
16:09:34 GREENHOUSES. NOTHING IN THE LARGE BOX WAS
TESTED. FOUND A BILL IN MR. BEAVERS
16:11:08 HOUSE, IT WAS REMOVED FROM THE HOME ALSO.
16:11:54 DA CRX THERE WAS A VIDEO TAKEN OF THE
HOUSE AND ITS CONTENTS. I
16:12:54 DIDN'T TAKE THE VIDEO OR ANY PICTURES. NOT
FAMILIAR WITH THE MEDICAL
16:13:27 MARAJUANA AUTHORIZATION OR THE MEDICAL CARD
THAT WAS TAKEN FROM MR.
16:13:55 BEAVERS. DON'T KNOW EXACTLY WHAT THE SCALE WAS
USED FOR. THERE WAS LOTS OF
16:14:43 LITTERATURE ON GROWING. DIDN'T FIND ANY CASH OR
LEDGERS. THE STARTER PLANTS
16:15:56 DIDN'T HAVE ANY ROOT STRUCTURE YET. I WAS AT THE
POLICE DEPT WHEN THE CALLS
16:16:26 WERE MADE TO MR. BEAVERS BY KATHY. THERE WAS A
HEADACHE MENTIONED IN THE
16:17:16 PHONE CALL TO MR. BEAVERS. KATHY WORKS AT THE

16:17:42 MEDICAL MARAJUANA PLANT IN
SPOKANE. \$250.00 WAS TAKEN FROM MR. BEAVERS PLUS
16:18:37 THE OTHER \$180.00 HE HAD ON
HIM. DON'T KNOW WHAT THE OTHER STUFF IN THE
16:19:22 JARS WAS IN THE KITCHEN. IT
WASN'T MARAJUANA. DON'T KNOW HOW MANY BAGGIES
WERE AT THE RESIDENCE.
16:20:01 PA RDX THERES CLIPS ON THE VIDEO OF
DIFFERENT PARTS OF THE HOUSE.
16:21:07 DON'T KNOW HOW LONG WE WERE AT THE HOUSE. DON'T
KNOW IF THERE WAS A TIME WE
16:21:42 THE VIDEO WAS STOPPED BY ANYONE. THERE WAS 31
PLANTS THAT HAD FULL ROOT
16:22:29 STRUCTURE. I SAW BAGGIES OF MARAJUANA IN THE
HOUSE.

16:25:58 **Stop recording**
(Off Record)

16:28:12
Recording Started:

16:28:12 **Record**
BEAVERS, MARK

16:28:25 **Other: PAULL, ERIC**
DDDDDDA RCCCCCX NOTHING FURTHER.

16:29:18 **Judge: Reinhardt, George**
CALLS COUNCIL TO THE BENCH. TRYING TO FIGURE OUT
THE TIME LINE. DONE FOR THE

16:34:10 **Stop recording**
(Off Record)

Court Minutes:

Session: REINHARDT102808A
Session Date: 10/28/2008
Judge: Reinhardt, George
Reporter: Veare, Keri

Division: DIST
Session Time: 08:36

Courtroom: Courtroom1

Clerk(s): Mollett, Charmaine

State Attorney(s):

Public Defender(s): Anderson, Staci

Prob. Officer(s):

Court interpreter(s):

Case ID: 0004

Case number: CR-07-27416

Plaintiff:

Plaintiff Attorney:

Defendant: BEAVERS, MARK

Pers. Attorney:

Co-Defendant(s):

State Attorney:

Public Defender:

Additional audio and annotations can be found in case: 0005.

10/29/2008

08:13:30

Recording Started:

08:13:30

Case called

08:13:45

Stop recording

Court Minutes:

Session: REINHARDT102808A
Session Date: 10/28/2008
Judge: Reinhardt, George
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Division: DIST
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Courtroom: Courtroom1

Clerk(s): Mollett, Charmaine

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Case ID: 0005

Case number: CR-07-27416

Plaintiff:

Plaintiff Attorney:

Defendant: BEAVERS, MARK

Pers. Attorney:

Co-Defendant(s):

State Attorney:

Public Defender:

Previous audio and annotations can be found in case: 0004

Additional audio and annotations can be found in case: 0006.

10/29/2008

08:43:48

Recording Started:

08:43:48

Case recalled

08:45:23

Stop recording
(Off Record)

08:45:31 Recording Started:

08:45:31 **Record**
BEAVERS, MARK

08:45:38 **Judge: Reinhardt, George**
10-29-08. DAY 2 OF JURY TRIAL. ANN WICK PA,
STACEY ANDERSON DA. DEF PRESENT

08:46:31 AND IN CUSTODY .

08:46:58 **State Attorney:**
CALLS FIRST WITNESS. KATHLEEN RAYLEEN JOHNSON.

08:47:37 **Other: JOHNSON, KATHLEEN**
PA DX WORK AT THE THC HEMP CENTER IN
SPOKANE. I VOLUNTEER. GO TO A

08:48:16 SUPPORT GROUP FOR MEDICAL MARAJUANA USERS. THEY
SHARE WITH EACH OTHER

08:48:55 INFORMATION. THEY ARE AUTHORIZED MEDICAL
PATIENTS. THE SUPPORT GROUP IS IN

08:49:30 SPOKANE WASHINGTON. I AM A PATIENT. I HAVE LEG
SEIZURES. BEEN AN AUTHORIZED

08:50:04 PATIENT FOR 3 YEARS. I USE MARAJUANA BETWEEN 2
AND 4 NIGHTS A WEEK. DEPENDING

08:51:24 **Stop recording**
(Off Record)

08:52:01 Recording Started:

08:52:01 **Record**
BEAVERS, MARK

08:52:07 **Other: JOHNSON, KATHLEEN**
PA DX I USE A VAPORIZER TO INJECT THE
MARAJUANA. IT'S SAFER. I KNOW MR.

08:52:54 BEAVERS. IDENTIFIES HIM IN THE COURTROOM. MET
HIM IN 2007 AT THE MEDICAL

08:53:18 MARAJUANA CLINIC. I SPENT SOME TIME WITH HIM.
I'D MEET HIM AT STARBUCKS

08:53:51 COFFEE SHOP AND HAD DINNER WITH HIM A COUPLE OF
TIMES. ALSO SAW HIM AT THE

08:54:21 SUPPORT GROUP. I DIDN'T SEEK HIM OUT, WE TALKED.
HE WAS AN AQUAINTENCE. WE

08:55:18 TALKED ABOUT BEING MEDICAL MARAJUANA PATIENTS.
TALKED ABOUT HOW THE MARAJUANA
08:56:07 WOULD BECOME LEGAL IN WASHINIGTON STATE. TALKED
ABOUT MEDICAL FOODS FOR THE
08:56:59 PATIENTS. TALKED ABOUT COOKING FOODS FOR THE
PATIENTS. HE TALKED ABOUT HAVING
08:57:54 MARAJUANA STARTS THAT HE COULD SELL TO THE
PATIENTS. HE SAID HE HAD PROBLEMS
08:58:25 WITH IRRITAL BOWL PROBLEMS. HE SAID HE GOT A
BOOK FROM THE LIBRARY THAT HE
08:59:12 SELF DIAGNOSED HIMSELF. MR. BEAVERS TALKED ABOUT
SOME PROPERTY HE PURCHASED
09:00:23 IN WASHINGTON A FEW YEARS BEFORE I MET HIM. HE
DIDN'T LIVE THERE BUT SAID HE
09:00:59 WANTED TO LIVE THERE AND RUN A MARAJUANA
BUSINESS. I CALLED DETECTIVE PAULL
09:01:46 AND TOLD HIM ABOUT MR. BEAVERS WANTING TO RUN
THIS BUSINESS. I FELT FEARFUL
09:03:27 BECAUSE MR. BEAVERS WANTED ME TO GET HIM THE
NUMBERS OF MEDICAL MARAJUANA
09:03:50 PATIENTS. HE PRESSURED ME. ABOUT TWO DAYS
BEFORE THANKSGIVING I MADE PHONE
09:04:37 CALLS FROM THE POLICE DEPT. I APOLOGIZED FOR
BEING TO ABRUPT TO MR. BEAVERS
09:05:14 WHEN I CALLED HIM. I TOLD HIM I HAD A FRIEND
THAT WANTED TO BUY SOME
09:05:46 MARAJUANA. WE MET HIM AT STARBUCKS COFFEE SHOP.
I FITTED WITH A BODY WIRE.
09:06:30 JULIE AND I MET MR. BEAVERS AT THE COFFEE SHOP.
WE WENT INSIDE FOR ABOUT 20
09:07:11 MINUTES. WE LEFT AND WENT OUT TO MARK BEAVERS
CAR. HE OPENED HIS TRUNK AND I
09:07:52 SAW A SUITCASE WITH JARS AND BAGS IN IT. THE
PICTURE OF EXHIBIT 10 IS OF THE
09:09:19 SUITCASE IN THE TRUNK OF HIS CAR. THE PEOPLE
THAT ATTEND THE SUPPORT GROUP
09:09:54 HAVE A VARIETY OF ILLNESSES.
09:10:11 DA CRX MARK GAVE ME SOME BUBBLE HASH. I
DIDN'T SOME IT, I USED A
09:10:48 VAPORZER. HE ALSO GAVE ME SOME CAPSULES THAT
CONTAINED MARAJUANA. THEY
09:11:27 CONTAINED A HEMP MATERIAL. ERIC PAULL PAID ME
FOR THE INFORMATION TO COME
09:12:19 SOME PHONE CALLS TO MARK BEAVERS. I TOLD MARK I
MET VICKI AT ONE OF THE
09:12:43 FROM WASHINGTON. I WAS PAID THAT DAY FOR THE

09:12:47 TIME I SPENT IN IDAHO. I MADE
SUPPORT GROUPS. I LET HIM KNOW THAT SHE WASN'T A
PATIENT. I TOLD HIM SHE
09:13:22 NEEDED HELP. THE FIRST PHONE CALL HE PUT ME OFF.
I STOPPED TALKING TO MARK
09:13:58 BECAUSE HE WAS PRESURRING ME TO GET THE PHONE
NUMBERS OF THE PATIENTS. I TOLD
09:14:45 HIM I HAD NO INTENTIONS TO HELP HIM. I TOLD HIM
I WAS NO READY FOR A PERSONAL
09:15:37 RELATIONSHIP, ROMANTIC. MARK SAID HE WAS
CONCERNED ABOUT MY BAD EATING
09:16:10 HABITS. MARK TALKED ABOUT THE BCD'S AND THE THC.
MARK SAID HE WAS INTERESTED
09:17:08 IN PEOPLE WHO WANTED MARAJUANA FOR RECREATIONAL
USE NOT AS PATIENTS. I'M NOT
09:17:45 UNDER THE INFLUENCE NOW. MARK DID GET A MEDICAL
AUTHOLRIZATION FROM THE
09:18:31 MEDICA MARAJUANA CLINIC IN SPOKANE, WA. VICKI
SAID WE HAD TO GET GOING IN THE
09:19:10 COFFEE SHOP, SO WE WENT OUTSIDE. I TOLD MR.
PAULL I WAS CONCERNED ABOUT MARK
09:20:19 WANTING TO TAKE ADVANTAGE OF MY FRIENDS, MY
AQUAINTESES AT THE CLINIC. HE
09:20:57 GAVE ME A BAG OF CAPSULES WITH LETTERS AND
NUMBERS AND HE WANTED ME TO TRY
09:21:33 THEM AND DO A SURVEY ON HOW THEY WERE, QUALITY
WISE. PA RDX
09:22:09 PA RDX MR BEAVERS SAID HE SELF DIAGNOSED
HIMSELF.
09:22:43 DA RCX TO OBTAIN HIS AUTHORIZATION YOU HAVE
TO HAVE AMEDICAL DIAGNOSIS.
09:23:36

09:23:40 **Judge: Reinhardt, George**
EXCUSES THE WITNESS. SHE CAN LEAVE.

09:24:11 **State Attorney:**
WANT TO PLAY AN AUDIO CD OF THE PHONE CALLS
THAT WERE MADE WITH MR. BEAVERS
09:24:50 AND VICKI. PLAYS THE CD. STOPPED CD AT TIME
STAMP 10:41. PROCEEDED AT 13:56
09:36:54 TIME STAMP. STOPPED AGAIN AT 15:00. PLAYED AGAIN
AT TIME STAMP 17:06. STATE
09:46:11 CALLS JULIE MORGAN.

09:46:43 **Other: MORGAN, JULIE**

PA DX JULIE MORGAN., WORK AT IDAHO STATE
POLICE. I'M A DETECTIVE, HAVE
09:47:11 BEEN FOR 18 YEARS. HAVE A MASTERS IN POST. HAVE
A BACHELORS IN CRIMINAL
09:47:58 JUSTICE. I WORK WITH DIFFERENT IDENTITIES. I
HAVE WORKED UNDERCOVER. USUALLY
09:48:31 HAVE A BODY WIRE AND HAVE OTHER MEMBERS IN THE
FORCE ASSIST ME FOR MY SAFETY.
09:48:55 I WAS ASKED BY THE CDA POLICE TO ASSIST IN THIS
INVESTIGATION. I MET WITH
09:49:36 DETECTIVE PAULL AND CARLOCK. WE HAD A MEETING. I
MET WITH THE INFORMANT
09:49:58 KATHY. I DID A SEARCH OF KATHY. I SEARCHED HER
AND HER PURSE FOR CONTRABAND.
09:50:33 TOOK ME SOME TIME TO GET THE BODY WIRE ON
KATHY'S CLOTHING. I WAS PROVIDED A
09:51:13 VEHICLE TO DRIVE. WE WENT TO THE STARBUCKS IN
POST FALLS. I WASN'T FITTED
09:51:47 WITH A BODY WIRE MYSELF. MR. BEAVERS GOT OUT OF
HIS TAN MERCEDES. I WAS
09:52:23 INTRODUCED TO HIM. I TOLD HIM I WAS HAVING A
MIGRANE AND I NEEDED TO GO INTO
09:52:47 STARBUCKS AND GET SOME CAFFEINE. I ORDERED THE
COFFEE AND MR BEAVERS AND
09:53:18 KATHY SAT DOWN. WE HAD A LENGTHY CONVERSATION
ABOUT MARAJUANA. TALKED ABOUT
09:53:54 COOKING WITH MARAJUANA. HE WAS TELLING ME ABOUT
THE THC IN MARAJUANA. TOLD ME
09:54:25 ABOUT THE FLOWERS AND THE MOLECULS IN THE
MARAJUANA AND HOW TO COOK WITH IT.
09:55:56 WE TALKED ABOUT THE POTENCY OF THE MARAJUANA. I
ASKED HIM IF HE HAD ANYTHING
09:56:29 TO SELL. HE SAID HE HAD TWO DIFFERENT MARAJUANAS
IN HIS CAR. I TOLD HIM I
09:56:56 WANTED THE BETTER MARAJUANA. I GOT A CLEAN CUP
FROM STARBUCKS TO PUT THE
09:57:36 MARAJUANA IN. WE WENT OUT TO HIS CAR TO THE
TRUNK. HE HAD A SUITCASE IN THE
09:58:27 CAR WITH THE MARAJUANA IN IT. I PURCHASED THE
MORE EXPENSIVE MARAJUANA.

10:02:02 **State Attorney:**
PLAYING THE TAPE OF THE BODY WIRE RECORDING.

10:02:31 **Stop recording**
(On Recess)

10:31:28 Recording Started:

10:31:28 **Record**
BEAVERS, MARK

10:31:32 **Judge: Reinhardt, George**
BACK ON THE RECORD. JURY PRESENT AND IN PLACE.
WILL LISTEN TO ANOTHER CD. CD

10:36:09 OF THE BODY WIRE WHEN MEETING TOOK PLACE AT
STARBUCKS.

11:30:39 **Other: MORGAN, JULIE**
DA CRX I WAS NOT PRESENT WHEN THE PHONE
CALLS WERE MADE TO MR. BEAVERS.

11:31:23 WHEN WE MET AT STARABUCKS I TOLD MR. BEAVERS I
HAD A MIGRANE HEADACHE. HIS

11:32:01 CAR WAS AN OLDER MODEL CAR. DIDN'T SEE ANY
SCALES IN MR. BEAVERS CAR.

11:32:38 PA RDX THE MARIJUANA WAS IN A CLEAR ZIP
LOCK BAGGIE. I PURCHASED A

11:33:29 WHOLE OUNCE OF THE MARAJUANA.

11:33:45 DA RCX THERE WAS A BUNCH OF OTHER BAGS OF
MARAJUANA IN THE TRUNK. DON'T

11:34:21 BELIEVE HE REMOVED IT FROM ANOTHER CONTAINER.

11:34:44 **Judge: Reinhardt, George**
EXCUSES THE WITNESS,. WE WILL NOW TAKE A RECESS
TO SET UP THE VIDEO.

11:35:31 **Stop recording**
(On Recess)

11:47:02 Recording Started:

11:47:02 **Record**
BEAVERS, MARK

11:47:04 **Judge: Reinhardt, George**
BACK ON RECORD. JURY PRESENT AND IN PLACE. WILL
PLAY THE VIDEO TAPE OF THE

11:47:53 SEARCH WARRANT NOW. VIDEO ENDED AT 12:10.

12:08:33 **State Attorney:**
HAVE A LAB REPORT, EXHIBIT 25.

12:10:54 **Stop recording**
(On Recess)

12:11:51
Recording Started:

12:11:51 **Record**
BEAVERS, MARK

12:11:53 **Judge: Reinhardt, George**
JURIES ARE GONE FOR LUNCH. MS. JOHNSON MADE A
COMMENT WHILE ON THE STAND.

12:12:36 ATTORNEYS APPROACHED ME FOR A MISTRIAL.

12:13:01 **Public Defender:**
KATHERINE JOHNSON MADE A STATEMENT IN HER
WRITTEN STATEMENT THAT MR BEAVERS

12:13:45 WANTED TO SELL MARIJUANA TO PAY FOR HIS
ATTORNEY. MOVE FOR A MISTRIAL. WE CAN

12:14:15 PROCEED TO A VERDICT FROM THE JURY. IF IT COMES
BACK GUILTY WE WILL ASK FOR A

12:14:58 MISTRIAL.

12:15:08 **State Attorney:**
THE STATEMENT THAT WAS MADE DIDN'T REFER TO THIS
CASE. I DID ADMONISH THE

12:15:59 WITNESS NOT TO MAKE ANY STATEMENTS LIKE THAT.
SHE WAS ASKED BY MS ANDERSON

12:16:42 FOR THOSE ANSWERS. ATTORNEY'S FEES COULD BE FOR
A CIVIL CASE OR AN ATTORNEY

12:17:49 FOR BUSINESS PURPOSES.

12:18:18 **Public Defender:**
IT WAS A PREJUDICIAL STATEMENT. I WILL ASK FOR A
MISTRIAL IF THE VERDICT

12:18:54 COMES BACK GUILTY.

12:19:09 **Judge: Reinhardt, George**
THERE WAS NO WAY TO KNOW WHAT THE ATTORNEY FEES
WOULD BE FOR. THE WITNESS

12:19:53 WAS INFORMED NOT TO MENTION ANYTHING ABOUT THE
PRIOR CASE. IT WASN'T

12:20:23 PREJUDICIAL. MOTION FOR A MISTRIAL IS DENIED.

12:20:41 **Public Defender:**
YOU CAN NOT UNRING THE BELL. THE RULES SAY IF

12:21:25 THE DEF ASK FOR THAT
INSTRUCTION THAT IT BE READ TO THE JURY AFTER
LUNCH. IN RECESS.

12:22:10 **Stop recording**
(On Recess)

12:46:39
Recording Started:

12:46:39 **Record**
BEAVERS, MARK

12:46:41 **Judge: Reinhardt, George**
BACK ON RECORD OUTSIDE THE PRESENCE OF THE JURY.
HAVE BEEN ASK TO ADVISE THE

12:47:17 JURY OF THE JURY INSTRUCTION 405. THE DEFENDANT
WILL TESTIFY ABOUT WHY HE HAS

12:48:08 TO HAVE A MEDICAL MARJUANA PERMIT.

12:48:47 **Public Defender:**
HAVE HEARD DIFFERENT TESTIMONY. MOST OF THE
EVIDENCE REVOLVES AROUND THE

12:49:19 MEDICAL MARAJUANA ISSUES.

12:49:58 **Other: BEAVERS, MARK DUANE**
DA DX MARK DUANE BEAVERS. HAVE 2 TYPES OF
HEPATITIS. B AND C. HAVE

12:50:47 INTERNAL HEMRHIDS, IRRITAL BOWL SYNDROM, HIGH
BLOOD PRESSURE. HAVE SEEN

12:51:20 SEVERAL DOCTORS FROM THE CHAZ CLINIC AND THE
ROCKWOOD CLINIC. SEEN DOCTORS IN

12:51:48 CDA ALSO.

12:52:26 **Public Defender:**
THIS IS AN ISSUE HE HAS THE RIGHT TO TESTIFY TO.
IT IS RELEVANT.

12:52:53 **Judge: Reinhardt, George**
OBJECTION IS SUSTAINED.

12:53:16 **Other: BEAVERS, MARK DUANE**
ALL THE DOCTORS I SAW AT THE ROCKWOOD CLINIC
MADE DIAGNOSIS OF MY CONDITIONS.

12:53:48 DR. ONG MADE A DIAGNOSIS, ALL MY DOCTORS HAVE.
ALSO DOCTOR DELRICK. LOOKING

12:56:20 AT REPORTS FROM DR ONG, DELRICK AND JOHNSON. DR
JOHNSON DIAGNOSED ME WITH
12:57:06 HE DIDN'T PERSCRIBE ANYTHING FOR ME. DON'T
REMEMBER DR. JOHNSON TELLING ME
12:58:07 WHAT I COULD DO. ID DID SOME RESEARCH ON MY
SYMPTOMS. HAD ANAL BLEEDING,
12:58:40 HAEADACHES, AND SOMETIMES CONSTIPATION., HAD
ANGINA ATTACKS. STRUGGLE WITH
12:59:07 ANXSIATY AND DEPRESSION.

13:00:13 **Public Defender:**
ASK FOR ANOTHER 15 MINUTE RECESS TO GO AND GET
MY RESEARCH ON WHY MY CLIENT
13:00:46 CAN TESTIFY IN HIS CASE.

13:01:02 **Stop recording**
(On Recess)

13:12:55
Recording Started:

13:12:55 **Record**
BEAVERS, MARK

13:12:58 **Other: BEAVERS, MARK DUANE**
DA DX THE MEDICAL RECORDS ARE ACCURATE. I
HAD TO HAVE A COLON OSTOPY
13:13:31 DONE. A PERSCRIPTION WAS MADE TO ME. DON'T
REMEMBER THE NAME OF THE DRUG. IT
13:14:00 WAS SUPPOSED TO HELP MY IRRITAL BOWL SYNDROME.
IT DID HAVE SOME OF THE
13:14:31 INTENTED EFFECTS. IT HELPED MY ANAL DISCOMFORT.
I BEGAN EXPERICENING SIDE OF
13:15:02 EFFECTS OF ANXIETY. ANGINA WAS ONE THE THE SIDE
EFFECTS LISTED. I DID READ
13:15:38 ABOUT THE THE SIDE EFFECTS. ONE OF THE SIDE
EFFECTS WAS ANGINA. I QUIT TAKING
13:16:01 IT AND STARTING USING MARAJUANA. I WAS ISSUED A
MEDICAL MARAJUANA CARD TO USE
13:16:43 IT. I WENT TO THE CLINIC 9-18-07. MET WITH DR.
ORVILLE. MET WITH MR STANFORD
13:17:14 THE FOUNDER OF THE CLINIC. ITS THE HEMP AND THC
CLINIC. THEIR HOME OFFICE IS
13:17:56 IN OREGON. HAVEN'T BEEN TOLD ABOUT OTHER CLINIC.
I PAID FOR ALL MY OWN
13:18:48 MEDICAL. DON'T HAVE INSURANCE. I HAVE GONE TO

13:19:20 THE EMERGENCY ROOM BEFORE FOR
 13:19:53 PASSING KIDNEY STONES. DON'T KNOW WHY I GOT
 13:19:53 THEM. I DIDN'T FOLLOW UP WITH THE
 13:20:28 OTHER DOCTOR. SYMPTOMS FIRST STARTED IN THE FALL
 13:20:28 OF 1996. I STARTED SEEING
 13:20:54 DOCTORS IN SEPTEMBER OF 2006. SEPTEMBER OF 2007
 13:20:54 I WENT TO THE MEDICAL
 13:21:32 MARAJUANA CLINIC. THE MARAJUANA HELPED ME WITH
 13:21:32 MY SYMPTOMS. ALL THE THINGS I
 13:22:29 HAD WENT AWAY AFTER STARTING TO SMOKE THE
 13:22:29 MARAJUANA. I DIDN'T KNOW OF ANY
 13:23:07 OTHER WAY TO MANAGE MY SYMPTOMS. I COULDN'T
 13:23:07 AFFORD TO KEEP GOING TO THE
 13:23:47 DOCTORS. I HAD TO START WEARING A DIAPER. THE
 13:23:47 CONDITION I HAD WAS
 13:24:27 UNPREDICTABLE. I TRIED VARIOUS FORMS OF
 13:24:27 NUTRITION TO HELP MY SYMPTOMS. WAS ON
 13:24:56 A HIGH FIBER DIET. STARTING DOING MY OWN
 13:24:56 COOKING. CHANGING MY DIET HELPED
 13:25:41 MY SYMPTOMS ALOT. DIDN'T TAKE ANY MORE
 13:25:41 MEDICATIONS EXCEPT FOR MY HIGH BLOOD
 13:26:24 PRESSURE PILLS. THE PERSCRIPTIONS IN MY HOME
 13:26:24 WERE FROM THE DOCTORS WHEN I
 13:27:03 HAD THE KIDNEY STONES. I COOK WITH MARAJUANA
 13:27:03 FOR THE MEDICINAL VALUE. IF
 13:27:48 YOU COOK THE MARAJUANA INTO FOODS IT HELPS WITH
 13:27:48 CERTAIN CHEMICALS. I READ
 13:29:12 ABOUT CBD'S AND THC. I READ MARAJUANA COULD HELP
 13:29:12 MY CONDITION. I LEARNED HOW
 13:29:39 TO COOK IT INTO FOODS. IT HELPED ME TO
 13:29:39 STABILIZE MY CONDITION SO I COULD
 13:30:21 STAY NORMAL. THE BENEFITS WERE OF GREAT VALUE TO
 13:30:21 ME. BEFORE USING IT I COULD
 13:30:57 ONLY FUNCTION 2 DAYS A WEEK. I IMPROVED THAT TO
 13:30:57 ABOUT 5 DAYS A WEEK. THE
 13:31:37 MARAJUANA WAS A MOOD STABILIZER. IT HELPED LOWER
 13:31:37 MY HIGH BLOOD PRESSURE. I
 13:32:27 SUFFERED WITH MY CONDITIONS ON A DAILY BASIS.
 13:32:27 HAD A PERSCRIPTION FOR MY
 13:33:27 IRRITAL BOWL SYMPTOMS. I'M BACK ON HIGH BLOOD
 13:33:27 PRESSURE MEDICATION. THE
 13:33:58 MARAJUANA HELPED ME ALOT. NO OTHER DRUG HELPED
 13:33:58 ME AS MUCH AS THE MARAJUANA.
 13:34:30 THE SYMPTOMS WOULD INCREASE IF I DIDN'T USE THE
 13:34:30 MARAJUANA. CAN'T USE THE
 13:34:30 MARAJUANA SINCE I'VE BEEN INCARCERATED. I HAVE

HEMROID FLARE-UPS. I HAVE TO
13:35:05 LAY DOWN UNTIL IT PASSES. I CAN'T MOVE WITHOUT
BEING IN PAIN. I DIDN'T DO
13:35:45 ANYTHING TO CAUSE MY ILLNESS. I GET SICK QUITE
OFTEN WHEN I DON'T USE
13:37:39 MARAJUANA. I STARTED DOING YOGA AND MEDITATING
AND EXERCISING MORE. I STARTED
13:39:21 TO GO TO THE CHAZ CLINIC IN SPOKANE BECAUSE THEY
LET YOU PAY ON A SLIDING
13:39:51 SCALE. I WAS SEEING DR. BAUMBERG. HE WAS HELPING
ME WITH CONVENTIONAL
13:40:31 MEDICATIONS. THE MARAJUANA HELPED ME WITH MY
BLOOD PRESSURE. I OWED MONEY TO
13:41:06 SEVERAL DOCTORS. MY HEALTH IS NOT RELIABLE
WITHOUT THE MARAJUANA. I'M
13:42:22 SUFFERING SERIOUS HARM. SINCE NOT BEING ABLE TO
USE THE MARAJUANA I'VE HAD
13:42:52 ANXIETY ATTACKS AND HAVE NOT BEEN ABLE TO
FUNCTION IN A NORMAL WAY.
13:43:50 PA CRX MY SYMPTOMS STARTED IN 1996. IT
PROGRESSIVELY GOT WORSE OVER A
13:44:33 PERIOD OF TIME. I WAS AFRAID I MIGHT HAVE
CANCER. DIDN'T SEE ANY DOCTORS. I
13:45:26 BOUGHT MY HOUSE IN 1989. MY PAYMENETS WERE \$350.
00. I EVENTUALLY REFINANCED
13:46:08 THE HOME. IT HAD AN ADJUSTABLE RATE. SOMETIMES
PAYMENTS WERE UP TO \$700.00 A
13:46:44 MONTH. I FELL BEHIND IN THE PAYMENTS. NOVEMBER
OF 2007 I WAS STILL MAKING
13:47:09 PAYMENTS ON MY HOME. I COMPLETELY REMODELED THE
INSIDE OF THE HOUSE. I BOUGHT
13:47:47 A COUPLE OF VEHICLES AND A NUMBER OF BOATS. I
ACQUIRED GROW LIGHTS, DVD'S . I
13:48:32 BOUGHT BOOKS TO LEARN HOW TO GROW THE MARAJUANA.
SAW DR. JOHNSON AT THE
13:49:13 ROCKWOOD CLINIC. WENT TO THE PANHANDLE HEALTH
CLINIC. I WAS ARRESTED IN 2006
13:49:58 FOR TRAFFICKING AND POSSESSION WITH INTENT TO
DELIVER. TOOK DIFFENENT
13:50:38 MEDICATIONS TO TREAT TWO CONDIHONS. I QUIT
TAKING THE HIGH BLOOD PRESSURE
13:51:21 MEDICATIONS. I USED MARAJUANA TO COOK WITH. I
WOULD TRY TO MAKE A BATCH OF
13:52:03 FOOD I WAS MAKING SO IT WOULD LAST. I'D USE AND
OUNCE TO A HALF AN OUNCE. I
13:52:41 USED ABOUT A QUARTER OUNCE A DAY. IT WAS CLOSE

TO 2 OUNCES A WEEK. I HAD 31
13:53:37 PLANTS AT MY HOUSE. HAD NEW STARTS ALSO, ABOUT
49. A MARAJUANA HAS A LIFE
13:54:34 CYCLE. DEPENDS ON THE STRAINS AND THE
CONDITIONS. YOU CAN REJUVINATE THE
13:55:38 PLANTS OVER AND OVER. YOU HAVE TO WAIT FOR THE
PLANTS TO BE HARVESTED TO BE
13:56:15 ABLE TO REJUVINATE IT AGAIN. MARAJUANA DOESN'T
HELP MY SYMPTOMS. 2007 WENT
13:58:04 TO THE EMERGENCY ROOM FOR MY KIDNEY STONES. I
DIDN'T GO TO THE EMERGENCY ROOM
13:58:35 NOVEMBER 21. THATS THE DAY I WAS ARRESTED. I
WOKE UP WITH A SEVERE PAIN IN MY
13:59:18 SIDE. IT WAS FRIGHTFULLY SCAREY. I WENT TO THE
HOSPITAL THAT NIGHT. IF I WAS
14:00:51 USING MARAJUANA I DIDN'T NEED TO TAKE
PHARMASUTACAL MEDICATIONS.
14:01:42 DA RDX IF YOU GROW A PLANT OVER A NINE
MONTH TIME FRAME YOU HAVE TO
14:02:36 KEEP GROWING THEM. NO ONE ANSWER FOR THE
QUESTIONS. THE 31 PLANTS WEREN'T A
14:03:13 HIGH YIELD PLANTS. THOSE PLANTS TAKE 4 OR 5
MONTHS TO GO THROUGH A GROW
14:04:08 SEASON. A PLANT YIELDS A COUPLE OF OUNZES A
WEEK. HAD A 1972 MERCEDES, 1983
14:05:30 AND A 1982 BASKET CASE. I PAID \$1000.00 FOR ONE
AND \$1200.00 FOR ONE. PAID
14:06:17 \$300.00, \$350.00 AND \$500.00 FOR THE WOODEN
BOATS. PAID FOR THEM WITH CREDIT
14:06:49 CARDS. I DID ALL THE WORK ON THE INSIDE OF THE
HOUSE MYSELF. I REFINISHED THE
14:07:31 FLOORS. BUILT ALL THE CABINETS FOR THE KITCHEN
AND THE BATHROOMS. SOME THINGS
14:08:03 I BOUGHT WITH CREDIT CARDS. WENT TO THE ROCKWOOD
CLINIC IN SEPTEMBER OF
14:08:34 2006. IDENTIFIES THE MEICAL MARAJUANA
CERTIFICATE. ADMIT DEF EXHIBIT B.

14:11:29 **Stop recording**
(On Recess)

14:21:34
Recording Started:

14:21:34 **Record**
BEAVERS, MARK

14:21:35 **Judge: Reinhardt, George**
BACK ON RECORD. I WILL RULE ON THAT MATTER WITH
THE INSTRUCTION.

14:22:35 **State Attorney:**
LEGAL BASIS FOR MY MOTION IS ON NECESSARY. IT
CALLS TO CERTAIN CIRCUMSTANCES.

14:23:18 READS RULE. THERE'S TWO MORE SPECIFICS. THERES
NOT BEEN A POPONDEROUS HARM.

14:23:57 THERE IS NO NECESSITY DEFENSE. THE DEFENSE
DOESN'T EVEN APPLY. MR. BEAVERS

14:24:56 HAS NOT MET ALL 4. THAT DEFENSE SHOULD NOT BE
PROPOSED AND SHOWN TO THE JURY.

14:25:34 HE SAYS HE CAN'T AFFORD TO GO TO A DOCTOR. HIS
SYMPTOMS WERE FROM 1996 TO

14:26:15 2000. HE DIDN'T GO TO A DOCTOR UNTIL 2006. HE
WASN'T FACING IMMEDIATE HARM.

14:26:45 WHEN HE HAD SEVERE PAIN HE WENT TO THE EMERGENCY
ROOM AND FOUND OUT HE HAD

14:27:21 KIDNEY STONES. HE QUIT GOING TO DOCTORS BECAUSE
OF THE EXPENSE. HE THIINKS

14:27:47 THE MARAJUANA WAS HELPING HIM. HE HAD MONEY THAT
WHOLE TIME. HE REMODELED

14:28:16 HIS HOME. BOUGHT CARS AND BOATS. DON'T BELIEVE
HE'S MET THE FACTUAL MATTER.

14:28:47 **Public Defender:**
HASINGS LAYS OUT THE COMMON LAW DEFENSE. THE
STATE INCORRECTLY ARGUES HIS

14:29:34 DIAGNOSIS. THE PERSCRIPTIONS GAVE HIM SEVERE
ANGINA SO HE QUIT TAKING THEM.

14:30:12 HE CAN LEAD A NORMAL LIFE BY USING THE
MARAJUANA. HE TESTIFIED HE DIDN'T DO

14:30:41 ANYTHING TO BRING ON HIS ILLNESSES. MR BEAVERS
TESTIFIED WHEN HE WAS TAKING

14:31:22 THE MEDICATION FOR THE IRRITAL BOWL SYNDROME
CAUSED HIM ANGINA. MR. BEAVERS

14:32:01 WAS ABLE TO GET BACK TO A NORMAL LIFE WHEN HE
STARED USING MARAJUANA. HE WAS

14:32:46 GROWING WHAT WAS MEDICALLY NEEDED BY HIM. HE HAD
ENOUGH FOR WHAT HE NEEDED.

14:33:18 HE WAS EXPERIEANCING WITH THE MARAJUANA FOR HIS
OWN USE. THERE'S A WASHINGTON

14:33:54 CASE THAT'S SIMILAR. THERE'S OTHER NECESSITY
CLAIMS. THERE ARE RECOGNIZED

14:35:22 DEFENSES IN IDAHO LAW. STATE V DIANA IS THE

WASHINGTON CASE. WE ASK THAT YOU
14:36:00 HEAR HIS DEFENSE.

14:36:18 **Judge: Reinhardt, George**
MEDICAL NECESSITY IS NOT A RECOGNIZED DEFENSE IN
14:37:00 IDAHO LAW. IT CAN APPLY TO
INTENT TO DELIVER. IT LACKS ADEQUATE USE OF THE
14:39:15 MARAJUANA. NO REASONABLE
EVIDENCE THE AMOUNT SIEZED WAS FOR HIS PERSONAL
14:40:05 USE. NO REASONABLE VIEW OF
THE EVIDENCE TO SUPPORT THE GIVING OF THE
INSTRUCTION.

14:40:59 **Stop recording**
(On Recess)

14:46:40
Recording Started:

14:46:40 **Record**
BEAVERS, MARK

14:46:54 **Stop recording**
(Off Record)

14:48:29
Recording Started:

14:48:29 **Record**
BEAVERS, MARK

14:48:32 **Judge: Reinhardt, George**
BACK ON RECORD. JURY PRESENT AND IN PLACE.

14:49:05 **Other: BEAVERS, MARK DUANE**
DA DX MARK DUANE BEAVERS. IDENTIFIES
14:50:23 EXHIBIT 10, THE ITEMS FOUND IN MY
THREW THE SUITCASE IN THE
14:50:55 BACK ON MY CAR WHEN KATHY CALLED. I PUT THE
LARGER AMOUNTS IN THE SUITCASE. I
14:51:34 PUT THE MARAJUANA I USE TO COOK WITH IN THE
KITCHEN. I SAW THE VIDEO OF THE
14:52:06 PLANTS. I USE ABOUT 1/4 OF AN OUNCE A DAY. USE
ABOUT 8 OUNCES A MONTH. THAT
14:52:38 PATICULAR VARIETY HAD ABOUT 30 BUDS . 4 OR 5 LBS

IS ABOUT HOW MUCH I USE A
14:53:38 MONTH. I SOLD THAT OUNCE AS A FAVOR FOR KATHY. I
GROW A VARIETY OF HERBS AND
14:54:05 SPICES FOR MY USE IN COOKING.
14:55:01 PA CRX I HAVE TWO GREEN HOUSES IN MY
BACKYARD. HAD ABOUT 31 PLANTS. HAD
14:55:59 MAYBE A FEW GRAMS IN MY KITCHEN CUPBOARD. HAD
ABOUT 1/2 LB IN THE SUITCASE. I
14:56:35 SOLD DETECTIVE MORGAN THE MARAJUANA THAT WAS IN
THE SUITCASE. PUT THE
14:57:05 SUITCASE IN THE CAR TO GO MEET KATHY AT
STARBUCKS. THOUGHT THEIR WAS A
14:57:35 POSSIBILITY I'D BE GIVING SOME OF THE MARAJUANA
TO DETECTIVE MORGAN. THERE WAS
14:58:12 2 DIFFERENT GRADES IN THE SUITCASE. DON'T
REMEMBER TELLING HER I COULD
14:58:44 PROVIDE SO MUCH MARAJUANA. I SAID THE GUY COULD
MAKE ALOT MORE MARAJUANA IF
14:59:23 HE TRIED. I ASKED AT THE MEETING WHO NEEDED CUTS
. HE WAS PASSING THEM OUT.
15:01:05 I CERTAINLY HAD CUTTINGS. I HAD 49 CUTTINGS.
15:03:17 DA RCX I DON'T REMEMBER WHAT I QUOTED THE
DETECTIVE ON THE COST. THE
15:03:51 STARTER PLANTS WERE TO REPLACE THE BIG PLANTS IN
THE GREEN HOUSES.
15:04:49 PA RCX THE GROW CYCLE CAN VARY ON EACH
INDIVIDUAL PLANTS. I COULD
15:05:30 HARVEST AND RE GROW THE PLANTS.
15:05:43 **Public Defender:**
WE HAVE NOTHING FURTHER.
15:05:59 **Judge: Reinhardt, George**
WE HAVE CLOSING ARGUEMENTS AND THE INSTRUCTIONS.
WE WILL DO THAT TOMORROW
15:06:35 MORNING. DON'T DISCUSS THE CASE. RETURN TOMORROW
AT 8:30 AM.
15:07:42 **Stop recording**
(Off Record)

Court Minutes:

Session: REINHARDT102808A
Session Date: 10/28/2008
Judge: Reinhardt, George
Reporter: Veare, Keri

Division: DIST
Session Time: 08:36

Courtroom: Courtroom1

Clerk(s): Mollett, Charmaine

State Attorney(s):

Public Defender(s): Anderson, Staci

Prob. Officer(s):

Court interpreter(s):

Case ID: 0006

Case number: CR-07-27416

Plaintiff:

Plaintiff Attorney:

Defendant: BEAVERS, MARK

Pers. Attorney:

Co-Defendant(s):

State Attorney:

Public Defender:

Previous audio and annotations can be found in case: 0005

10/30/2008

08:37:23

Recording Started:

08:37:23

Case recalled

08:38:30

Stop recording
(Off Record)

10:09:25 **Recording Started:**

10:09:25 **Record**
BEAVERS, MARK

10:09:28 **Judge: Reinhardt, George**
HAVE BEEN NOTIFIED BY THE BAILIFF HAS BEEN
FEELING BAD ALL MORNING, JUROR

10:10:00 WILLIAM CAPAUL, JUROR #8. I WILL LET HIM GO AS
THE ALTERNATE JUROR. NO

10:10:57 OBJECTION FROM THE STATE OR THE DEFENSE. MR.
PAUL IS ILL.

10:12:08 **Defendant: BEAVERS, MARK**

10:12:23 **Other: CAPAUL, WILLIAM**
I HAD SOME BAD NEWS LAST NIGHT. I FEEL ILL. I
CAN STAY IF NEEDED BUT PREFER

10:13:00 TO GO HOME. GOING TO THE BATHROOM ALOT.

10:13:22 **Judge: Reinhardt, George**
RELEASE JUROR WILLIAM CAPAUL.

10:13:55 **Stop recording**
(On Recess)

10:18:47 **Recording Started:**

10:18:47 **Record**
BEAVERS, MARK

10:18:52 **Judge: Reinhardt, George**
BACK ON RECORD. STATE V BEAVERS. COUNCIL HAS A
PACKET OF PROPOSED

10:19:57 INSTRUCTIONS.

10:20:07 **State Attorney:**
HAVE AN OBJECTION TO INSTRUCTION 18. THE STATE
PROHIBITED INTRODUCING ANY OF

10:20:49 THE DEF'S PAST RECORD.

10:21:08 **Public Defender:**
INSTRUCTION 5 I OBJECT TO . NUMBER 10 HAS AN

10:21:59 IMPROPER COMMENT I OBJECT TO. IT
TALKS ABOUT EXHIBIT 1, 2, AND 4. IT'S IMPROPER.
10:22:29 ASK THE COURT NOT TO GIVE
INSTRUCTION 10. WE ASK THE COURT TO GIVE THE
NECESSITY INSTRUCTION.

10:23:14 **State Attorney:**
BEEN IN TRIAL WITH COUNCIL BEFORE. IT'S IMPROPER
TO SUGGEST THERE'S AN OPTION
10:23:50 TO THE JURY. DON'T LIKE THEM HAVING THE 3RD
OPTION.

10:24:25 **Public Defender:**
INSTRUCTION 23 IS ABOUT AN UNANIMOUS DECISION.

10:25:13 **Stop recording**
(On Recess)

10:26:22
Recording Started:

10:26:22 **Record**
BEAVERS, MARK

10:26:22 **Judge: Reinhardt, George**
WILL GIVE THE JURY TWO SETS OF INSTRUCTIONS.

10:26:57 **Stop recording**
(On Recess)

10:36:14
Recording Started:

10:36:14 **Record**
BEAVERS, MARK

10:36:15 **Judge: Reinhardt, George**
BACK ON RECORD. JURY PRESENT AND IN PLACE. READS
FINAL JURY INSTRUCTIONS. STT
10:56:55 STATE TO PRESENT THE CLOSING ARGUMENT.

11:18:12 **Public Defender:**
CLOSING ARGUMENT.

11:42:07 **General:**
Time stamp

11:42:13 **State Attorney:**
REBUTTAL STATEMENET.

11:52:48 **Judge: Reinhardt, George**
CLERK SWEARS BAILIFF FOR DELIBERATION. JURY
RETURNED TO JURY ROOM FOR
11:54:15 DELIBERATION.

11:55:39 **Stop recording**
(Off Record)

12:14:35
Recording Started:

12:14:35 **Record**
BEAVERS, MARK

12:14:36 **Judge: Reinhardt, George**
STATE AND DEF COUNCIL PRESENT. WILL BE AMENDING
THE PART 4 OF THE AMENDED
12:15:11 INFORMATION. DEF NOT PRESENT. FIRST PAGE VERY
LAST LINE. AMEND TO 37-2732 B.
12:16:10 IT'S AN ERROR IN CITATION. THAT'S THE WRONG CODE
SECTION. SET FOR A BASIS FOR
12:16:50 ENHANCEMENT. MANDATORY MINIMUM FIXED SENTENCE.
WILL READ 2732B. PAGE 3, PART
12:19:59 4 TO BE AMENDED.

12:20:34 **Public Defender:**
I OBJECT. IT WILL CHANGE THE CHARGE. CHANGES THE
DISCLOSURE MY CLIENT HAS.

12:21:32 **State Attorney:**
I HAVE NOT PART 2, 3, OR 4. IT HAS NOT BEEN
SUBMITTED TO THE JURY. IT
12:22:21 SPECIFICALLY SETS FORTH WHAT THE PUNISHMENT WILL
BE. I WROTE A LETTER AT THE
12:22:44 BEGINNING OF THIS CHARGE ABOUT THE CODE SECTION.

12:23:06 **Judge: Reinhardt, George**
MOTION TO AMEND GRANTED. I HAVE INTERLINEATED
THE INFORMATION.

12:23:35 **Public Defender:**
ASK YOU TO RECONSIDER THIS. IT'S A YEAR OLD.
IT'S TOO LATE TO BE MAKING THIS

12:23:58 CHANGE.

12:24:13 **Judge: Reinhardt, George**
MOTION FOR RECONSIDERATION IS DENIED.

12:24:35 **State Attorney:**
I NEED TO DRAFT THE WORDING IN PARTS 2 AND 3.
THAT'S IN PARTS 3.

12:26:26 **Stop recording**
(On Recess)

13:44:08
Recording Started:

13:44:08 **Record**
BEAVERS, MARK

13:44:10 **Judge: Reinhardt, George**
THE JURY HAS A VERDICT. JURY PRESENT AND IN
PLACE. BOTH COUNCILS PRESENT. THE

13:45:43 CLERK WILL READ THE VERDICT. DEFENDANT HAS BEEN
FOUND GUILTY ON ALL CHARGES.

13:47:21 IN RECESS.

13:47:45 **Stop recording**
(On Recess)

14:34:05
Recording Started:

14:34:05 **Record**
BEAVERS, MARK

14:34:06 **Judge: Reinhardt, George**
JURY IS BACK IN THE JURY ROOM TO WORK ON PART
II. I'M GOING TO INSTRUCT THE

14:34:43 JURY ON PARTS 1, 2, 3, AND 4. SPECIAL VERDICT
PARTS 2,3, AND 4. WE HAVE A

14:35:22 PROPOSED SPECIAL VERDICT FORM. BOTH PARTIES
AGREE. PL EXHIBIT 26. THE SPECIAL

14:36:20 VERDICT AND INFORMATION FROM THE DEF'S OTHER CASE

14:36:58 CR06-08813 IS THE DEF'S OTHER CASE.

14:37:48 **Public Defender:**
THE WORDING OF THE CONDITION THE DEF OBJECTS TO.

HIS OTHER CASE IS
14:39:08 CR-06-18813 OF WHICH HE HAS NOT BEEN CONVICTED.
HE CONDITIONALLY WAIVES HIS
14:39:39 HEARING. HE HAS NOT BEEN SENTENCED IN CR-06-
18813.
14:40:17 WAIVING THE FINDINGS BY THE JURY. WANT TO HAVE A
HEARING BEFORE HIS
14:40:46 SENTENCING HEARING.

14:41:19 **Judge: Reinhardt, George**
GIVING UP A VERY VALUABLE RIGHT. THE DEF
UNDERSTANDS. HE'S WAIVING HIS RIGHTS
14:42:00 TO THE JURY FINDING A VERDICT ON THE SPECIAL
VERDICT FOR PARTS 2,3 AND 4. DEF
14:43:45 HAS THE AMENDED INFORMATION. PART 5 HAS BEEN
WITHDRAWN.

14:44:48 **Defendant: BEAVERS, MARK**
I'VE READ PART II, NOT NECESSARY TO READ THAT.
READ PART 3, NOT NECESSARY TO
14:45:19 READ THAT. READ PART 4, NOT NECESSARY TO READ
THAT.

14:45:50 **Judge: Reinhardt, George**
THE JURY IS SUPPOSED TO FIND A VERDICT ON PART
2, 3 AND 4. SENTENCES COULD BE
14:46:55 INCREASED. DEF UNDERSTANDS. PART 2, DEF PLDS
GLTY. ADMITS BEEN FOUND IN
14:48:18 GLTY IN CR-06-18813 AND CR-07-27416. I ACCEPT
THESE ADMISSIONS.

14:49:23 **State Attorney:**
HE CAN'T WITHDRAW HIS ADMISSIONS IN THE FUTURE.
HE CAN APPEAL. MOVE TO
14:50:53 WITHDRAW PART 5.

14:51:03 **Judge: Reinhardt, George**
BRING BACK THE JURY SO WE CAN RELEASE THEM.
INSTRUCTIONS GIVEN TO THE CLERK
14:52:28 TO FILE. RELEASES THE JURORS. IN RECESS.

14:54:34 **Stop recording**

WILLIAM J. DOUGLAS
Prosecuting Attorney
501 Government Way/Box 9000
Coeur d'Alene, ID 83816-9000
Telephone: (208) 446-1800
Fax: (208) 446-1840

STATE OF IDAHO } ss
COUNTY OF KOOTENAI
FILED: 10-29-08
CLERK, DISTRICT COURT
Charmane M. Holt
DEPUTY

ASSIGNED ATTORNEY:
ANN WICK

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,)	
	)	Case No. CR-F07-27416
Plaintiff,)	
	)	STIPULATION
vs.)	
)	
MARK D. BEAVERS,)	
)	
Defendant.)	
_____)	

It is hereby stipulated between the State of Idaho and the Defendant, Mark Beavers, with the assistance of defense counsel, Staci Anderson, that:

1. All items packaged as Exhibits 1, 2, and 4 contain marijuana.
2. The forensic report of Anne Nord, with the attached Affidavit, dated 12-5-07, shall be admitted at trial.
3. The audio recording of the body wire worn by Catherine Johnson, Exhibit 6 shall be admitted and played for the jury in its entirety.
4. The audio recording of the recorded phone calls placed by Catherine Johnson to the Defendant, Mark Beavers, Exhibit 5, shall be admitted, but that the exhibit

will be played only to the jury in a redacted format, whereby the State will not play
the recording of the first call from time stamp 10:41 to 13:56 and from 15:00 to

17:05. THE CD IN EVIDENCE IS NOT ITSELF REDACTED, BUT IS THE
ENTIRE RECORDING.

DATED this 29 day of October, 2008.



STACY ANDERSON
Attorney for Defendant



ANN WICK
Deputy Prosecuting Attorney



MARK BEAVERS
Defendant

PART II
INSTRUCTION NO. 1

STATE OF IDAHO } ss
COUNTY OF KOOTENAI
FILED: 10-30-08
O'CLOCK ____ N
JERK, DISTRICT COURT
Charmaine Hall
DEPUTY

Having found the defendant guilty of Delivery of Marijuana, Possession of Marijuana with the Intent to Deliver, and Trafficking in Marijuana, you must next consider whether the Defendant has previously committed a violation of the Uniform Controlled Substances Act and/or a violation of an Idaho Statute relating to narcotic drugs, marijuana, depressant, stimulant and/or hallucinogenic drugs.

The State alleges the defendant has been found guilty of such a violation by a jury on a prior occasion as follows:

1. On or about the 19th day of June, 2008, the defendant, Mark Beavers, was found guilty by a jury of Trafficking in Marijuana, in Kootenai County Case No. CRF06-18813, and

2. On or about the 19th day of June, 2008, the defendant, Mark Beavers, was found guilty by a jury of Possession of Marijuana with the Intent to Deliver, in Kootenai County Case No. CRF06-18813,.

The existence of a prior violation of the Uniform Controlled Substances Act and/or a violation of an Idaho Statute relating to narcotic drugs, marijuana, depressant, stimulant and/or hallucinogenic drugs must be proved beyond a reasonable doubt and your decision must be unanimous.

PART III
INSTRUCTION NO. 2

Having found the defendant guilty of Delivery of Marijuana, you must next consider whether the Defendant has within the last ten (10) years committed one or more felony offenses of dealing, selling, or trafficking in a controlled substance on an occasion different than the charges alleged in this case.

The State alleges the defendant has been found guilty of such a violation by a jury on a prior occasion as follows:

1. On or about the 19th day of June, 2008, the defendant, Mark Beavers, was found guilty by a jury of Trafficking in Marijuana, in Kootenai County Case No. CRF06-18813, and

2. On or about the 19th day of June, 2008, the defendant, Mark Beavers, was found guilty by a jury of Possession of Marijuana with the Intent to Deliver, in Kootenai County Case No. CRF06-18813.

The existence of a felony offense of dealing, selling, or trafficking in a controlled substance on a prior occasion and within the last ten years must be proved beyond a reasonable doubt and your decision must be unanimous.

PART IV
INSTRUCTION NO. 3

Having found the defendant guilty of Trafficking in Marijuana, you must next consider whether the Defendant has previously committed a trafficking offense.

The State alleges the defendant has been found guilty of such an offense as follows:

1. On or about the 19th day of June, 2008, the defendant, Mark Beavers, was found guilty by a jury of Trafficking in Marijuana, in Kootenai County Case No. CRF06-18813.

The existence of a trafficking offense must be proved beyond a reasonable doubt and your decision must be unanimous.

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,)	
	)	Case No. CR-F07-27416
Plaintiff,)	
	)	SPECIAL VERDICT:
vs.	)	PARTS II, III, AND IV
)	
MARK DUANE BEAVERS,)	
)	
Defendant.)	
_____)	

We, the Jury, for our verdict, unanimously answer the question(s) submitted to us as follows:

QUESTION NO. 1: Do you find that that the Defendant, Mark Beavers, has previously been found guilty by a jury, in Kootenai County Case No. CR F06-18813, of a violation of the Uniform Controlled Substances Act and/or a violation of an Idaho Statute relating to narcotic drugs, marijuana, depressant, stimulant and/or hallucinogenic drugs.

Yes ____ No ____

QUESTION NO. 2: Do you find that that the Defendant, Mark Beavers, has within the last ten (10 years) been found guilty by a jury, in Kootenai County Case No. CR F06-18813, of committing one or more felony offenses of dealing, selling, or trafficking in a controlled substance, on an occasion different than the charges alleged in this case?

Yes ____ No ____

QUESTION NO. 3: Do you find that that the Defendant, Mark Beavers, has previously been found guilty by a jury, in Kootenai County Case No. CR F06-18813, of a trafficking offense?

Yes ____ No ____

DATED this ____ day of _____, 2008.

PRESIDING JUROR

STATE OF IDAHO } ss
COUNTY OF KOOTENAI
FILED: 10-30-08
AT _____ O'CLOCK _____ M
CLERK, DISTRICT COURT
Charmaine Mallett
DEPUTY

INSTRUCTION NO. 1

You have now heard all the evidence in the case. My duty is to instruct you as to the law.

You must follow all the rules as I explain them to you. You may not follow some and ignore others. Even if you disagree or don't understand the reasons for some of the rules, you are bound to follow them. If anyone states a rule of law different from any I tell you, it is my instruction that you must follow.

INSTRUCTION NO. 2

As members of the jury it is your duty to decide what the facts are and to apply those facts to the law that I have given you. You are to decide the facts from all the evidence presented in the case.

The evidence you are to consider consists of:

1. sworn testimony of witnesses;
2. exhibits which have been admitted into evidence; and
3. any facts to which the parties have stipulated.

Certain things you have heard or seen are not evidence, including:

1. arguments and statements by lawyers. The lawyers are not witnesses.

What they say in their opening statements, closing arguments and at other times is included to help you interpret the evidence, but is not evidence. If the facts as you remember them differ from the way the lawyers have stated them, follow your memory;

2. testimony that has been excluded or stricken, or which you have been instructed to disregard;
3. anything you may have seen or heard when the court was not in session.

In deciding the facts of this case, you will have to decide which witnesses to believe and which witnesses not to believe. You may believe anything a witness says or only part of it or none of it. In making your decision, you may take into account a number of factors including the following:

1. Was the witness able to see, or hear, or know the things about which that witness testified?
2. How well was the witness able to recall and describe those things?
3. What was the witness's manner while testifying?

4. Did the witness have an interest in the outcome of this case or any bias or prejudice concerning any party or any matter involved in the case?

5. How reasonable was the witness's testimony considered in light of all the evidence in the case?

6. Was the witness's testimony contradicted by what that witness has said or done at another time, or by the testimony of other witnesses or by other evidence?

In deciding whether or not to believe a witness, keep in mind that people sometimes forget things. You need to consider therefore whether a contradiction is an innocent lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or with only a small detail.

The weight of the evidence presented by each side does not necessarily depend on the number of witnesses testifying on one side or the other. You must consider all the evidence in the case, and you may decide that the testimony of a smaller number of witnesses on one side has greater weight than that of a larger number on the other.

INSTRUCTION NO. 3

It is alleged that the crime charged was committed "on or about" a certain date. If you find the crime was committed, the proof need not show that it was committed on that precise date.

INSTRUCTION NO. 4

The Information in this case is of itself a mere accusation or charge against the defendant and does not of itself constitute any evidence of the defendant's guilt; you are not to be prejudiced or influenced to any extent against the defendant because a criminal charge has been made.

INSTRUCTION NO. 5

Under our law and system of justice, the defendant is presumed to be innocent. The presumption of innocence means two things.

First, the state has the burden of proving the defendant guilty. The state has that burden throughout the trial. The defendant is never required to prove his or her innocence, nor does the defendant ever have to produce any evidence at all.

Second, the state must prove the alleged crime beyond a reasonable doubt. A reasonable doubt is not a mere possible or imaginary doubt. It is a doubt based on reason and common sense. It is the kind of doubt which would make an ordinary person hesitant to act in the most important affairs of his or her own life. If after considering all the evidence you have a reasonable doubt about the defendant's guilt, you must find the defendant not guilty.

INSTRUCTION NO. 6

The Defendant is charged by Information as follows:

COUNT I: DELIVERY OF A CONTROLLED SUBSTANCE: That the Defendant, MARK DUANE BEAVERS, on or about the 21st day of November, 2007, in the County of Kootenai, State of Idaho, did unlawfully and knowingly deliver a controlled substance, to-wit: Marijuana, a Schedule I controlled substance, to Idaho State Police Detective Julie Morgan;

COUNT II: POSSESSION OF A CONTROLLED SUBSTANCE WITH THE INTENT TO DELIVER: That the Defendant, MARK DUANE BEAVERS, on or about the 21st day of November, 2007, in the County of Kootenai, State of Idaho, did unlawfully and knowingly possess a controlled substance, to-wit: Marijuana, a Schedule I controlled substance, with the intent to deliver the aforementioned controlled substance; and

COUNT III: TRAFFICKING IN MARIJUANA: That the Defendant, MARK DUANE BEAVERS, on or about the 21st day of November, 2007, in the County of Kootenai, State of Idaho, did knowingly possess twenty-five (25) or more marijuana plants, and/or did aid and abet another in so doing.

To these charges the Defendant has pleaded not guilty.

INSTRUCTION NO. 1

In order for the Defendant to be guilty of Count I, Delivery of a Controlled Substance, the State must prove each of the following:

1. On or about November 21, 2007;
2. in the State of Idaho;
3. the Defendant, MARK DUANE BEAVERS, delivered any amount of marijuana to another; and
4. the Defendant either knew it was marijuana or believed it was a controlled substance.

If any of the above has not been proven beyond a reasonable doubt, then you must find the Defendant not guilty. If each of the above has been proven beyond a reasonable doubt, you must find the Defendant guilty.

INSTRUCTION NO. 8

In order for the Defendant to be guilty of Count II, Possession of a Controlled Substance with Intent to Deliver, the State must prove each of the following:

1. On or about November 21, 2007;
2. in the State of Idaho;
3. the Defendant, MARK DUANE BEAVERS, possessed any amount of marijuana; *and*
4. the Defendant either knew it was marijuana or believed it was a controlled substance,
and
5. the Defendant intended to deliver that substance to another.

If any of the above has not been proven beyond a reasonable doubt, then you must find the Defendant not guilty. If each of the above has been proven beyond a reasonable doubt, you must find the Defendant guilty.

INSTRUCTION NO. 9

If you find the Defendant not guilty of Possession of a Controlled Substance with the Intent to Deliver, you must next consider the included offense of Possession of Marijuana. In order to find the Defendant guilty of Possession of Marijuana, the State must prove the following:

1. On or about November 21, 2007;
2. in the State of Idaho;
3. the Defendant, Mark Beavers, possessed over three (3) ounces of marijuana; and
4. the Defendant either knew it was marijuana or believed it was a controlled substance.

If any of the above has not been proven beyond a reasonable doubt, you must find defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

INSTRUCTION NO. 10

The parties in this case agree that all the items packaged as Exhibits 1, 2, and 4 contain marijuana. The parties further agree that you may consider the forensics report submitted by Anne Nord, from the Idaho State Forensic Laboratory.

INSTRUCTION NO. 11

In order for the Defendant to be guilty of Count III, Trafficking in Marijuana, the State must prove each of the following:

1. On or about November 21, 2007;
2. in the State of Idaho;
3. the Defendant, MARK DUANE BEAVERS, did knowingly possess
twenty-five (25) or more marijuana plants; and
4. the Defendant either knew it was marijuana or believed it was a controlled substance.

If any of the above has not been proven beyond a reasonable doubt, then you must find the Defendant not guilty. If each of the above has been proven beyond a reasonable doubt, you must find the Defendant guilty.

INSTRUCTION NO. 12

If you find the defendant guilty of trafficking marijuana you will be required to answer a specific question on the verdict form regarding the number of marijuana plants trafficked by the defendant. You will answer this question on the verdict form, and your answer must be unanimous.

INSTRUCTION NO. 13

The term "marijuana" as used in these instructions means all parts of the plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant unless the same are intermixed with prohibited parts thereof, fiber produced from the stalks, oil or cake made from the seeds or the achene of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom or where the same are intermixed with prohibited parts of such plant), fiber, oil, cake, or the sterilized seed of such plant which is incapable of germination.

INSTRUCTION NO. 14

A person has possession of something if the person knows of its presence and has physical control of it, or has the power and intention to control it. More than one person can be in possession of something if each knows of its presence and has the power and intention to control it.

INSTRUCTION NO. 15

Under Idaho law, Marijuana is a controlled substance.

INSTRUCTION NO. 14

The possession of a controlled substance is not sufficient by itself to prove an intent to deliver. The state must prove one or more additional circumstances from which you can infer that intent. The additional circumstances could include, but are not limited to, the possession of controlled substances in quantities greater than would be kept for personal use; or the existence of items customarily used to weigh, package, or process controlled substances; or the existence of money and/or records which indicate sales or deliveries of controlled substances.

You are not required to infer an intent to deliver from any such additional circumstances. Whether any such additional circumstances have been proven, whether an intent to deliver should be inferred from them, and the weight to be given such inference are for you to decide. You should consider all of the evidence when deciding whether the state has proven an intent to deliver beyond a reasonable doubt.

INSTRUCTION NO. 17

The term "deliver" means the transfer or attempted transfer, either directly or indirectly, from one person to another.

INSTRUCTION NO. 18

You have heard evidence that a state agent asked the Defendant to deliver marijuana to another person. Even though the defendant may have delivered the marijuana as charged by the state, if it was the result of "entrapment" then you must find the defendant not guilty. Law enforcement officials "entrapped" the defendant if three things occurred:

1. The idea for committing the crime came from an agent of the state and not from the defendant.
2. The state agent(s) then persuaded or talked the defendant into committing the crime. Merely giving the defendant an opportunity to commit the crime is not the same as persuading the defendant to commit the crime.
3. The defendant was not ready and willing to commit the crime before the law enforcement officials spoke with the defendant. Consider all of the facts when you decide whether the defendant would have been ready and willing to commit the crime without the actions of the state agent(s).

If, from all of the evidence, you have a reasonable doubt whether the defendant was entrapped into committing the offense of Delivery of a Controlled Substance, you must find the defendant not guilty.

INSTRUCTION NO. 19

In this case you will return a verdict, consisting of a series of questions. Although the explanations on the verdict form are self-explanatory, they are part of my instructions to you. I will now read the verdict form to you. It states:

"We, the Jury, for our verdict, unanimously answer the question(s) submitted to us as follows:

QUESTION NO. 1: Is the Defendant, Mark Beavers, guilty or not guilty of Delivery of Marijuana?

Guilty ____ Not Guilty ____

QUESTION NO. 2: Is the Defendant, Mark Beavers, guilty or not guilty of Possession of Marijuana with the Intent to Deliver?

Guilty ____ Not Guilty ____

If you unanimously answered Question No. 2 "**Guilty**", then proceed to answer Question No. 4. If you unanimously answered Question No. 2 "**Not Guilty**", then proceed to answer Questions Nos. 3 and 4.

QUESTION NO. 3: Is the Defendant, Mark Beavers, guilty or not guilty of Possession of more than three (3) ounces of Marijuana?

Guilty ____ Not Guilty ____

QUESTION NO. 4: Is the Defendant, Mark Beavers, guilty or not guilty of Trafficking in Marijuana?

Guilty ____ Not Guilty ____

If you unanimously answered Question No. 4 "Guilty", then proceed to answer Question No. 5. If you unanimously answered Question No. 4 "Not Guilty", then you should simply sign the verdict form and advise the bailiff.

QUESTION NO. 5: Did the Defendant, Mark Beavers, possess at least 25 marijuana plants?

Yes ____ No ____

The verdict form then has a place for it to be dated and signed. You should sign the verdict form as explained in another instruction.

INSTRUCTION NO.

20

I have outlined for you the rules of law applicable to this case and have told you of some of the matters which you may consider in weighing the evidence to determine the facts. In a few minutes counsel will present their closing remarks to you, and then you will retire to the jury room for your deliberations.

The attitude and conduct of jurors at the beginning of your deliberations are very important. It is rarely productive at the outset for you to make an emphatic expression of your opinion on the case or state how you intend to vote. When you do that at the beginning, your sense of pride may be aroused, and you may hesitate to change your position even if shown that it is wrong. Remember that you are not partisans or advocates, but are judges. For you, as for me, there can be no triumph except in the ascertainment and declaration of the truth.

As jurors you have a duty to consult with one another and to deliberate before making your individual decisions. You may fairly discuss among yourselves all of the evidence you have seen and heard in this courtroom about this case, together with the law that relates to this case as contained in these instructions.

During your deliberations, you each have the right to re-examine your own views and change your opinion. You should only do so if you are convinced by fair and honest discussion that your original opinion was incorrect based upon the evidence the jury saw and heard during the trial and the law as given to you in these instructions.

Consult with one another. Consider each other's views, and deliberate with the objective of reaching an agreement, if you can do so without disturbing your individual judgment. Each of you must decide this case for yourself; but you should do so only after a discussion and consideration of the case with your fellow jurors.

INSTRUCTION NO.

21

The original instructions and the exhibits will be with you in the jury room. They are part of the official court record. For this reason please do not alter them or mark them in any way.

The instructions are numbered for the convenience of the Court in referring to specific instructions. You should not concern yourselves about the numbering of the instructions, as the numbers are of no significance. Nor does the order in which the instructions are given have any significance as to their relative importance.

INSTRUCTION NO.

22

You have been instructed as to all the rules of law that may be necessary for you to reach a verdict. Whether some of the instructions apply will depend upon your determination of the facts. You will disregard any instruction which applies to a state of facts which you determine does not exist. You must not conclude from the fact that an instruction has been given that the Court is expressing any opinion as to the facts.

INSTRUCTION NO.

23

Upon retiring to the jury room, select one of you as a presiding juror, who will preside over the deliberations. It is that person's duty to see that discussion is orderly; that the issues submitted for your decision are fully and fairly discussed; and that every juror has a chance to express himself or herself upon each question.

In this case, your verdict must be unanimous. When you all arrive at a verdict, the presiding juror will sign it and you will return it in open court.

Your verdict in this case cannot be arrived at by chance, by lot, or by compromise.

If, after considering all of the instructions in their entirety, and after having fully discussed the evidence before you, the jury determines that it is necessary to communicate with me, you may send a note by the bailiff. You are not to reveal to me or to anyone else how the jury stands until you have reached a verdict or unless you are instructed by me to do so.

A verdict form suitable to any conclusion you may reach will be submitted to you with these instructions.

However, none of you should surrender your honest opinion as to the weight or effect of evidence or as to the innocence or guilt of the defendant just because the majority of the jury feels otherwise or merely for the purpose of returning an unanimous verdict.

FILED 10-30-08 AT
3:15 P.M.
STATE OF IDAHO, COUNTY OF KOOTENAI
SS
CLERK OF THE DISTRICT COURT
BY Charmaine Mollat DEPUTY

FIRST JUDICIAL DISTRICT COURT, STATE OF IDAHO
IN AND FOR THE COUNTY OF KOOTENAI
324 W. GARDEN AVENUE
COEUR D'ALENE, IDAHO 83814

STATE OF IDAHO

Plaintiff,

vs.

MARK BEAVERS

Defendant.

DOB:

DL or SSN: [REDACTED] ID

Case No.: CR-2007-0027416

JURY INSTRUCTIONS GIVEN

Attached hereto are the jury instructions given on the trial of the above matter.

Copies have been given to counsel of record.

DATED this _____ day of _____, 2008.

Deputy Clerk

STATE OF IDAHO } ss
COUNTY OF KOOTENAI
FILED: 10-30-08
AT 2:15 O'CLOCK P.M.
CLERK, DISTRICT COURT
Charmaine Hollett
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,)	
	)	Case No. CR-F07-27416
Plaintiff,)	
	)	SPECIAL VERDICT
vs.)	
)	
MARK DUANE BEAVERS,)	
)	
Defendant.)	
_____)	

We, the Jury, for our verdict, unanimously answer the question(s) submitted to us as follows:

QUESTION NO. 1: Is the Defendant, Mark Beavers, guilty or not guilty of Delivery of Marijuana?

Guilty ☒ Not Guilty _____

QUESTION NO. 2: Is the Defendant, Mark Beavers, guilty or not guilty of Possession of Marijuana with the Intent to Deliver?

Guilty ☒ Not Guilty _____

If you unanimously answered Question No. 2 "Guilty", then proceed to answer Question No. 4. If you unanimously answered Question No. 2 "Not Guilty", then proceed to answer Questions Nos. 3 and 4.

QUESTION NO. 3: Is the Defendant, Mark Beavers, guilty or not guilty of Possession of more than three (3) ounces of Marijuana?

Guilty _____ Not Guilty _____

QUESTION NO. 4: Is the Defendant, Mark Beavers, guilty or not guilty of Trafficking in Marijuana?

Guilty ☒ Not Guilty _____

If you unanimously answered Question No. 4 "Guilty", then proceed to answer Question No. 5. If you unanimously answered Question No. 4 "Not Guilty", then you should simply sign the verdict form and advise the bailiff.

QUESTION NO. 5: Did the Defendant, Mark Beavers, possess at least 25 marijuana plants?

Yes ☒ No ☐

DATED this 30 day of October, 2008.

JO ANN MUSSELMAN
PRESIDING JUROR

State of Idaho
County of Kootenai
Filed 12/02/08
At 5:00 o'clock P M.
CLERK OF THE COURT
BY: Tamara L. Johnson
Deputy

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,)
)
Plaintiff,)
)
vs.)
)
Mark Beavers,)
Defendant.)
DOB [REDACTED]

Case No. ^① CR 06-18813
^② **CRF** CR07-27416

ORDER FOR EVALUATION(S)
AND SETTING SENTENCING

In Custody ☒ Yes
☐ No

The above named defendant having - [] pled guilty in this matter, ☒ been found guilty by jury trial
to: ① Trafficking in marijuana, Drug-trafficking in marij., possession w/ intent to manufacture
② Controlled substance-delivery, poss w/ intent to deliver, Drug Trafficking marij.

IT IS ORDERED that not later than the next business day after the date of this order you must physically
report to Probation & Parole, 202 Anton, Coeur d'Alene, Idaho (208/769-1444) and comply with conditions of
the presentence investigation. The presentence report is due seven (7) days prior to the sentencing hearing.

IT IS FURTHER ORDERED that your continued release is conditioned upon your making and keeping all
appointments with Probation & Parole, complying with all conditions of the presentence investigator, and
obtaining any or all of the following evaluations. You must obtain any evaluation checked below.

_____ Substance Abuse Evaluation [] } Pursuant to I.C. 19-2524, to be paid for by
_____ Mental Health Evaluation [] } the Dept. of Health & Welfare subject to
_____ Psychosexual Evaluation reimbursement by the defendant.
_____ Domestic Violence Evaluation

YOU ARE ORDERED to appear for sentencing on Jan 21, 2009 at 3:00 p m.

DATED this 2 day of December, 2008.

CW Doe
Judge

CERTIFICATE OF DELIVERY

I hereby certify that on the 03 day of December, 2008 copies of the foregoing Order
were delivered in court, mailed-postage prepaid, sent by facsimile or interoffice mail to:

Defense Attorney: S. Anderson

☐ In Court ☐ Interoffice ☒ Faxed 446-1701

Defendant: _____

☐ In Court ☐ Interoffice ☐ Mailed

Probation & Parole: _____

☐ In Court ☐ Interoffice ☒ Faxed (208) 769-1481

Prosecuting Attorney: Kootenai County PIA

☐ In Court ☐ Interoffice ☒ Faxed (208) 446-1833

Other: Jail

☐ In Court ☐ Interoffice ☐ Mailed ☒ Faxed 446-1401

CLERK OF THE DISTRICT COURT KOOTENAI COUNTY

BY: Tamara L. Johnson
Deputy

657

Court Minutes:

Session: HOSACK012109P
Session Date: 01/21/2009
Judge: Hosack, Charles
Reporter:

Division: DIST
Session Time: 14:54

Courtroom: Courtroom 11

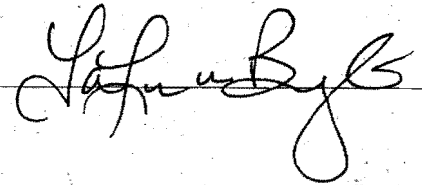
Clerk(s): Burrington, Talisa

State Attorney(s): Laird, Terri

Public Defender(s): Reuter, Dennis

Prob. Officer(s):

Court interpreter(s):



Case ID: 0005

Case number: CR2007-27416

Plaintiff:

Plaintiff Attorney:

Defendant: BEAVERS, MARK

Pers. Attorney:

Co-Defendant(s):

State Attorney: Laird, Terri

Public Defender:

01/21/2009

15:44:57

Recording Started:

15:44:57

Case called

15:45:04

Judge: Hosack, Charles

Sentencing Hearing - Def in custody with Ms.
Anderson

15:45:27 **Defendant: BEAVERS, MARK**
yes I have seen report

15:45:43 **State Attorney: Laird, Terri**
We need to continue, not prepared to proceed. We
need more time to prepare

15:46:14 brief reagrding the enhancements. Ms. Wick
position to do this one time and

15:46:55 get it right. She is in trial currently and
could not be here today. I am not

15:47:17 prepared to go forward today.

15:47:24 **Add Ins: ANDERSON, STACI**
I understand states position needing cont. I had
indicated that I would give

15:47:52 no obj. to continue. My client in cusotdy 14
months now and has been pending

15:48:09 fr some time. Ready to proceed today.

15:48:18 **State Attorney: Laird, Terri**
She will need just a few more days.

15:48:28 **Add Ins: ANDERSON, STACI**
Obj to Filing any brief. We wish to proceed
today.

15:48:56 **Judge: Hosack, Charles**
Court is ready to proceed. Absence of input from
either party. Complex

15:49:39 issues with enhancements. Court knows how it
would apply the law. There are

15:50:15 mandatory minimums. One thing clear is first
case one of the charges has a

15:50:34 three year fixed - that mutes the custody issue.
I will make decision and

15:51:22 apply law. Have concerns, likely record of issue
of illegal sentence could

15:51:48 come up, comments. Extremely frustrating to
courts. Has been rescheduled and

15:53:21 rescheduled. 4-5 months on sent and state is
just now working on brief.

15:54:29 States brief to be filed by the end of the week
and PD to have it by close of

15:54:45 business on 1/23. Schedule for sentencing at
1/28/09 at 3 PM.

15:55:53 Schedule for status conference and sentencing.

15:56:26 Issue of how enhancements
apply. In order to be fair in sentencing, def
and parties need to be aware of
15:57:01 how statutes work and then proceed to sentencing.

15:59:44 **Add Ins: ANDERSON, STACI**
One of the issues is what constitutes a prior
conviction.

16:00:11 **Judge: Hosack, Charles**
Discussion regarding statutes.

16:01:56 Def brief due by 1/27 close of business.

16:02:56 **Stop recording**

WILLIAM J. DOUGLAS
Prosecuting Attorney
501 Government Way/Box 9000
Coeur d'Alene, ID 83816-9000
Telephone: (208) 446-1800

STATE OF IDAHO
COUNTY OF KOOTENAI
FILED: 188

2009 JAN 23 PM 4: 19

DISTRICT COURT
Theresa Sullivan
DEPUTY

ASSIGNED ATTORNEY:
ANN WICK

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,)	
	)	Case Nos. CR-F06-18813
Plaintiff,	)	CRF07-27416
vs.)	
	)	STATE'S SENTENCING
MARK D. BEAVERS,	)	MEMORANDUM
Defendant.)	
_____)	

COMES NOW, ANN WICK, Deputy Prosecuting Attorney, and hereby submits the following memorandum in support of the State's anticipated sentencing recommendations in the above-entitled cases.

FACTS

Defendant was tried in Kootenai County Case No. F06-18813 by a jury and, on June 19, 2008, found guilty¹ of the following felony offenses:

Trafficking in Marijuana; five (5) pounds or more, a violation of I.C. § 37-2732B(a)(1)(B).

Possession with Intent to Deliver Marijuana, a violation of I.C. § 37-2732(a)(1)(B).

Defendant committed these crimes, as charged in the Information, on or about August 13, 2006. However, during trial, Defendant testified to growing a large number of marijuana plants over the course of several years leading up to August 2006. Defendant admitted having cultivated more than one marijuana harvest and to possessing "mother plants" in his basement, from which additional plants and/or harvests could be made. It was also established at trial that Defendant had in his possession in August 2006 several books and other publications about the topics of

¹ A copy of the jury's verdict is attached as Exhibit A.

growing and using marijuana. Among these publications was at least one book offering instruction on how to avoid police detection when growing marijuana.

Defendant was tried in Kootenai County Case No. F07-27416 by a jury and, on October 30, 2008, found guilty² of the following additional felony offenses:

Delivery of Marijuana, a violation of I.C. § 37-2732(a).

Possession with Intent to Deliver Marijuana, a violation of I.C. § 37-3732(a)(1)(B).

Trafficking in Marijuana, 25 or more plants, a violation of I.C. § 37-2732B(a)(1)(A).

Defendant committed these crimes on November 21, 2008, while Defendant was awaiting trial on the charges in Case No. F06-18813. At trial, an audio recording of phone calls between Defendant and a confidential source revealed Defendant attempting to avoid direct conversation about marijuana and talking about the potential delivery of marijuana to the confidential source's friend. Defendant suggests that one never knows who might be listening in.

On October 30, 2008, after being found guilty of the additional charges in Case No. F07-27416, Defendant admitted that a jury had previously found him guilty of Trafficking in Marijuana and Possession with Intent to Deliver Marijuana.³ Defendant made these admissions with specific reference to the enhancements alleged in sequence in the Amended Information; however, the State withdrew the standard habitual offender enhancement.

Although Defendant admitted that he was found guilty of these previous crimes, Defendant retained his right to challenge whether the jury findings in Case No. F06-18813 were sufficient to form a basis for sentencing enhancements, as a matter of law. He now faces sentencing in both cases.

APPLICABLE LAW

Idaho Code § 37-2732B provides that upon a conviction of Trafficking in Marijuana in the amount of five pounds or more, the defendant "shall be sentenced to a mandatory minimum fixed term of imprisonment of three (3) years and fined not less than ten thousand dollars (\$10,000).

Upon a conviction of Possession with Intent to Deliver Marijuana, the maximum penalty

² A copy of the jury's verdict is found in the court file, and the Court may take judicial notice of such document.

³ Please refer to the court record for Defendant's specific admissions. Said admissions were orally entered on the record, but any additional written documentation of the admissions was retained by the court and its

is five years in prison and up to a \$15,000 fine. I.C. § 37-2732(a)(1)(B).

Delivery of Marijuana is punishable up by a term of imprisonment up to five years and a fine of up to \$15,000. I.C. § 37-2732(a)(1)(B). However, § I.C. § 37-2739A provides:

Any person who is convicted of violating the felony provisions of section 37-2732(a), Idaho Code, by distributing controlled substances to another person, who is not subject to a fixed minimum term under section 37-2739B, Idaho Code, and who has previously been convicted with the past ten (10) years in a court of . . . any state . . . of one or more felony offenses of dealing, selling or trafficking in controlled substances on an occasion or occasions different from the felony violation of section 37-2732(a), Idaho Code, and which offense or offenses were punishable in such court by imprisonment in excess of one (1) year, shall be sentenced to the custody of the state board of correction for a mandatory minimum period of time not less than three (3) years or for such greater period as the court may impose up to a maximum of life imprisonment. The mandatory minimum period of three (3) years incarceration shall not be reduced and shall run consecutively to any other sentence imposed by the court.

Upon a conviction of Trafficking in Marijuana, 25 or more plants, the defendant “shall be sentenced to a mandatory minimum fixed term of imprisonment of one (1) year and fined not less than five thousand dollars (\$5,000). I.C. § 37-2732B(a)(1)(A). However, a second “conviction for any trafficking offense as defined in [37-2732B(a)] shall result in a mandatory minimum fixed term that is twice the mandatory minimum that would otherwise be required. § I.C. § 37-2732B(a)(7).

Furthermore, a person “convicted of a second or subsequent offense under this act, who is not subject to a fixed minimum term under section 37-2739B, Idaho Code,” carries twice the maximum possible sentence that would ordinarily apply. I.C. § 37-2739(a). I.C. § 37-2739(b) provides: “an offense is considered a second or subsequent offense, if, prior to his conviction of the offense, the offender has at any time been convicted under this act or under any statute of the United States or of any state relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs.”

Finally, with respect to any person who is found to have “violated the provisions of” I.C. § 37-2732B, I.C. § 27-2732B(a)(8) provides that the “adjudication of guilt or the imposition or execution of sentence shall not be suspended, deferred, or withheld, nor shall such person be eligible for parole prior to serving the mandatory minimum fixed term of imprisonment

clerk.

prescribed in this section. Further, the court "shall not retain jurisdiction." I.C. § 27-2732B(a)(8).

ARGUMENT

1. Defendant Must be Sentenced to a Mandatory Minimum Term of Prison of Three (3) Years on the Trafficking Conviction in Case No. F06-18813, Which Term Shall Not be Suspended, Deferred, or Withheld; Nor Shall the Court Retain Jurisdiction.

It is not anticipated that Defendant will contest this argument. The State suggests that this is the appropriate, and perhaps easiest, starting place for an analysis of how the enhancements apply in Case No. F07-27416.

2. Defendant Must be Sentenced to a Consecutive Three Years of Prison on the Delivery Conviction in Case No. F07-27416.

The enhancement of a consecutive three years of prison found in I.C. § 37-2739A applies to any person who is convicted of violating the felony provisions of I.C. § 37-2732(a), by distributing controlled substances to another person. Defendant Beavers was convicted by a jury of a violation of I.C. § 37-2732(a) for delivering a controlled substance (marijuana) to an undercover police detective. The enhancement next requires that such a person not be subject to a fixed minimum term under I.C. § 37-2739B. Defendant Beavers is not subject to a fixed minimum term under I.C. § 37-2739B.

The enhancement next requires that a person have been previously convicted within the past 10 years of at least one felony offense of dealing, selling or trafficking in controlled substances. As of October 30, 2008, when he was convicted of Delivery of Marijuana, Defendant Beavers had been previously convicted, on June 19, 2008, of the felony offense of trafficking in a controlled substance, as well as the felony offense of possession with intent to deliver, which can be said to constitute dealing. Finally, the enhancement requires that the previous conviction be punishable by imprisonment in excess of one year. Both of Defendant's previous convictions (Trafficking and Possession with Intent to Deliver) carry maximum punishments of over one year imprisonment.

If all of the above requirements are met, I.C. § 37-2739A clearly dictates that the court shall impose a mandatory minimum period of three years incarceration which shall not be reduced and shall run consecutively to any other sentence imposed by the court.

Nevertheless, it is anticipated that Defendant will assert that he was not "convicted" of a

STATE'S SENTENCING MEMORANDUM - 4

crime in F06-18813 prior to his being convicted of the crimes in F07-27416, since he was not sentenced in F06-18813 prior to trial in F07-27416. However, Idaho law clearly establishes that one is convicted, not upon sentencing, but upon either a guilty plea, or a finding of guilt by a jury after a trial. *U.S. v. Sharp*, 145 Idaho 403, 179 P.3d 1059 (2008). In *Sharp*, citing several Idaho criminal statutes, the Idaho Supreme Court noted that a conviction is a separate and distinct occurrence from punishment and must therefore occur first. *Id.* The Court specifically rejected the notion that “conviction” means a judgment of conviction. *Id.* at 405, 179 P.3d 1061. Therefore, Defendant Beavers was convicted of a felony offense of dealing, selling, or trafficking prior to his conviction of Delivery in F07-27416 and is properly subject to the mandatory and consecutive three year term of incarceration found in I.C. § 37-2739A.


3. Defendant Must be Sentenced to a Mandatory Minimum Term of Prison of Two (2) Years on the Trafficking Charge in Case No. F07-27416, Which Term Shall Not be Suspended, Deferred, or Withheld; Nor Shall the Court Retain Jurisdiction.

A second conviction for any trafficking offense as defined in 37-2732B(a) shall result in a mandatory minimum fixed term that is twice the mandatory minimum that would otherwise be required. § I.C. § 37-2732B(a)(7). Pursuant to I.C. § 37-2732B(a)(1)(A), prior to any enhancements being applied, Defendant Beavers must be sentenced to a mandatory one-year term of imprisonment on the Trafficking conviction in Case No. F07-27416. Such term of imprisonment shall not be suspended, deferred, or withheld; nor shall the court retain jurisdiction. Accordingly, with the enhancement found in I.C. § 37-2732B(a)(7), Defendant Beavers must be sentenced to a fixed minimum term of two years of imprisonment, which shall not be suspended, deferred, or withheld, or subject to retained jurisdiction.

Again, Defendant may attempt to argue that he was not “convicted” of a crime in F06-18813 prior to his being convicted of the crimes in F07-27416. However, *Sharp* remains controlling law on the issue, as explained above in Section 2 of this memorandum. Defendant

Beavers was clearly convicted of a trafficking offense in Case No. F06-18813 prior to being convicted of a second trafficking offense in Case No. F07-27416.

DATED this 23rd day of January, 2009.

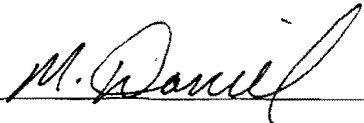


ANN WICK
Deputy Prosecuting Attorney

CERTIFICATE OF MAILING

I hereby certify that on the 23 day of January, 2009, a true and correct copy of the foregoing was mailed, faxed, and/or hand-delivered to:

STACI ANDERSON
PUBLIC DEFENDER'S OFFICE



ORIGINAL

Staci Anderson, Deputy Public Defender
Office of the Kootenai County Public Defender
PO Box 9000
Coeur d'Alene, Idaho 83814
Phone: (208) 446-1700; Fax: (208) 446-1701
Bar Number: 6867

CLERK OF DISTRICT COURT
COUNTY OF KOOTENAI
FILED

2009 JAN 29 AM 9:38

Staci Anderson
DEPUTY

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

STATE OF IDAHO,)	
)	
Plaintiff,	)	CASE NUMBER CR-06-0018813
	)	CR-07-0027416
V.)	
	)	DEFENDANT'S RESPONSE TO STATE'S
MARK D. BEAVERS,	)	SENTENCING MEMORANDUM
)	
Defendant.)	
)	

COMES NOW, the above named defendant by and through his attorney, Staci L Anderson, Deputy Public Defender, and hereby submits the following memorandum in response to the State's anticipated sentencing recommendations.

I. STATEMENT OF THE CASE

Mr. Mark Beavers was found guilty after a jury trial held June 19, 2008, of Trafficking in Marijuana, five pounds or more in violation of I.C. § 37-2732B(a)(1)(B) and Possession with Intent to Deliver Marijuana in violation of I.C. § 37-2732(a)(1)(B) in case number CR-06-18813. According to the criminal information, the State alleges that these crimes were committed on or about August 13, 2006.

**DEFENDANT'S RESPONSE
TO STATE'S SENTENCING
MEMORANDUM**

Page 1

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Mr. Beavers was found guilty after a jury trial held October 30, 2008, of Trafficking in Marijuana, twenty-five or more plants in violation of I.C. § 37-2732B(a)(1)(A), Possession with Intent to Deliver Marijuana in violation of I.C. § 37-2732(a)(1)(B), and Delivery of Marijuana in violation of I.C. § 37-3732(a) in case number CR-07-27416. According to the criminal information, the State alleges that these crimes were committed on November 21, 2007.

Mr. Beavers argues that the June 2008 conviction is insufficient to form a basis for sentencing enhancements.

II. ARGUMENT

Idaho has long held that the persistent violator statute does not impose punishment for past criminal activities; rather “[i]t is a stiffened penalty for the latest crime, which is considered to be an aggravated offense because a repetitive one.” *State v. Haggard*, 190 P.3d 193, 195 (Idaho App.,2008); *State v. Polson*, 93 Idaho 912, 914 (1970) (quoting *Gryger v. Burke*, 334 U.S. 728, 732 (1948)). In this case Mr. Beavers should not be subject to a stiffened penalty because on November 21, 2007, the day he was charged with trafficking, intent to deliver, and delivery, in CR-07-27416, he had not yet been convicted for trafficking and possession with intent to deliver arising from crimes occurring on August 13, 2006, in CR-06-18813.

In *State v. Brandt*, 110 Idaho 341, 344 (Ct.App.1986), the Court stated the general rule that “convictions entered the same day or charged in the same information should count as a single conviction for purposes of establishing habitual offender status.” This rule allows a defendant a chance to rehabilitate himself between convictions and assures that a first time offender, committing multiple felonies in one course of conduct, is not unfairly sentenced as a

persistent violator. *Id.*, citing Annotation, *Chronological or Procedural Sequence of Former Convictions as Affecting Enhancement of Penalty for Subsequent Offense Under Habitual Criminal Statutes*, 24 A.L.R.2d 1247 (1952); see *State v. Harrington*, 133 Idaho 563, 565 (Idaho App., 1999).

While the two convictions at question here did not happen the same day nor were charged in the same information, they did make up a series of multiple felonies arising from one course of conduct. Mr. Beavers was never afforded the opportunity to rehabilitate himself between convictions, having never been convicted of a crime as of the day the second violation took place.

III. CONCLUSION

Therefore, Mr. Beaver's asserts that the June 2008 conviction in CR-06-18813 cannot serve as a basis for enhancing his sentence arising from the October 2008 conviction in CR-07-27416.

In CR-06-18813 Mr. Beavers was convicted of:

1. Trafficking in Marijuana, five pounds or more, I.C. § 37-2732B (a)(1)(B), pursuant to the statute the penalty is a mandatory minimum fixed term of imprisonment of three years and not less than ten thousand dollars in fines.
2. Possession with Intent to Deliver Marijuana, I.C. § 37-2732 (a)(1)(B), pursuant to the statute the penalty is (fixed concurrent to the mandatory minimum in charge above) a maximum of five years in prison and a fine of up to fifteen thousand dollars.

In CR-07-27416 Mr. Beavers was convicted of:

**DEFENDANT'S RESPONSE
TO STATE'S SENTENCING
MEMORANDUM**

Page 3

1. Trafficking in Marijuana, five pounds or more, I.C. § 37-2732B (a)(1)(B), pursuant to the statute the penalty is a mandatory minimum fixed term of imprisonment of three years and not less than ten thousand dollars in fines. This sentence should run concurrent with charge above.
2. Possession with Intent to Deliver Marijuana, I.C. § 37-2732 (a)(1)(B), pursuant to the statute the penalty is (fixed concurrent to the mandatory minimum in charge above) a maximum of five years in prison and a fine of up to fifteen thousand dollars. This sentence should run concurrent with charge above.
3. Delivery of Marijuana, I.C. § s37-2798(a), pursuant to the statute the penalty is a term of imprisonment up to five years and a fine of up to fifteen thousand dollars.


Therefore, pursuant to the statutes above, in CR-06-18813 the unified sentence Mr. Beavers should receive is a mandatory minimum of three years fixed with five years maximum.

Finally, pursuant to the statutes above, in CR-07-27416 the unified sentence Mr. Beavers should receive is a mandatory minimum of three years fixed with five years maximum to run CONCURRENT with CR-06-18813:

DATED this 29th day of January, 2009.

OFFICE OF THE KOOTENAI
COUNTY PUBLIC DEFENDER

BY:


STACI L ANDERSON
DEPUTY PUBLIC DEFENDER

**DEFENDANT'S RESPONSE
TO STATE'S SENTENCING
MEMORANDUM**

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CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was personally served by placing a copy of the same in the interoffice mailbox on the 31st day of January, 2009, addressed to:

Kootenai County Prosecutor

Kristi Horton

**DEFENDANT'S RESPONSE
TO STATE'S SENTENCING
MEMORANDUM**

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Court Minutes:

Session: HOSACK013009A
Session Date: 01/30/2009
Judge: Hosack, Charles
Reporter: Schaller, Joann

Division: DIST
Session Time: 10:52

Courtroom: Courtroom9

Clerk(s): Rohrbach, Shari

State Attorney(s): Wick, Ann

Public Defender(s): Anderson, Staci

Prob. Officer(s):

Court interpreter(s):

Case ID: 0002

Case number: CR2007-27416

Plaintiff:

Plaintiff Attorney:

Defendant: Beavers, Mark

Pers. Attorney:

Co-Defendant(s):

State Attorney: Wick, Ann

Public Defender: Anderson, Staci

01/30/2009

11:03:41

Recording Started:

11:03:41

Case called

11:03:51

Judge: Hosack, Charles

Calls, sentencing in both cases, CR07-27416.

11:04:11

State Attorney: Wick, Ann

11:04:24 **Public Defender: Anderson, Staci**

11:04:37 **Judge: Hosack, Charles**
 This has been set for status conference before
 sentencing in order to clarify

11:04:53 the sentencing scheme. Once that has been
 identified we can then proceed to

11:05:24 the sentencing.

11:05:53 **General:**
 Time stamp

11:05:54 **Judge: Hosack, Charles**
 The court will go through what it thinks is
 available, before we get to the

11:06:19 enhancements. Reviews charges and sentences: in
 06 case Ct I: traff in marij,

11:07:09 less than 25 lbs, up to 15 yrs and 50,000. Ct
 II: not more than 5 yrs, or

11:09:07 fine not more than 15,000. IN 07 case: Ct I:
 delivery of cont sub 5 yrs, fine

11:10:26 up to 15,000. Ct II: marij intent del 5 yrs and
 15, 000 CtIII 25 plants: up

11:10:54 to 15 yrs, man min of 1 yr, 5,000 fine - up to
 15,000. Max penalties under

11:11:18 all five and all consec total of 45 yrs and 4
 yrs fixed, and 145,000 fine, an

11:11:48 15,000 required to be imposed. Now enhancements
 in case 2: reviews. section

11:14:26 2739 is not mandatory as the Court reads it, it
 allows the Court to double.

11:16:33 There are consec fixed life enhancements and
 doubling the fines. Now we go to

11:16:51 what is the least mandatory min that the law
 requires under these

11:17:11 enhancements? It could be enhanced to 2 consec
 life terms, what are the

11:17:40 minimums? On trafficking: the doubling can be
 set forth. There are 3 fixed

11:18:31 in the 06 case. One statute says the sentence
 should run consec. in 07 case.

11:20:27 The Way case dealt with some of this. Its a 1990
 case, before enhancements

11:22:25 came in, reads. The way I read this, the del had
no fixed min. explains.

11:28:01 Ewell case from the Court of Appeals issued this
year, talks about the

11:28:40 enhancement being run as part of the sentence,
not consec., comments.

11:34:23 My conclusion is that in the second case is that
enhancements on consec fixed

11:34:39 life, and the min for the enhancement is 3 yrs
on the delivery, fixed. Case 2

11:35:13 can be run concurr with case 1. Both case
require man min of 3 yrs fixed, but

11:37:00 not required to run consec.

11:38:27 **State Attorney: Wick, Ann**

11:39:48 I agree with how the court set forth the
statutory scheme. Comments re: Way

11:40:41 case.

11:41:40 **Judge: Hosack, Charles**
Discussion regarding consecutive.

11:45:19 **State Attorney: Wick, Ann**
Argues.

11:50:52 **Public Defender: Anderson, Staci**
We submit based on the briefing, and agree with
Court's analysis.

11:51:07 **Judge: Hosack, Charles**
Comments.

11:55:32 I think either a guilty plea or finding of
guilty acts as a conviction,

11:56:31 enhancements are available in case 2 even though
case 2 had not proceeded to

11:56:50 a verdict yet.

11:59:03 **Pers. Attorney:**

11:59:04 **Public Defender: Anderson, Staci**
We're ready for sentencing.

11:59:10 **State Attorney: Wick, Ann**
We're ready.

11:59:19 **Stop recording**
 (On Recess)

12:00:42 Recording Started:

12:00:42 **Record**
 Beavers, Mark

12:01:07 **Defendant: Beavers, Mark**
 I've reviewed the PSI.

12:01:14 **Public Defender: Anderson, Staci**
 No corrections.

12:01:28 **Defendant: Beavers, Mark**
 I have some problems with it.

12:01:35 **State Attorney: Wick, Ann**
 I have some corrections. It says meth and should
 be marij. Correct total for

12:02:11 lab for 07 case total 600.00 more, total should
 be 1700.00.

12:04:43 **Public Defender: Anderson, Staci**
 Gives corrections.

12:06:51 and PA: No evidence.

12:07:04 **Defendant: Beavers, Mark**
 I have a question, I understand I have a right
 to address, what would be

12:07:44 the purpose?

12:07:50 **Judge: Hosack, Charles**
 Explains. I can't give you legal advice.

12:08:29 **Defendant: Beavers, Mark**
 I have concerns with the PSI report. There is
 information that

12:08:55 mischaracterizes me and there is information not
 in the report, comments. I

12:09:52 don't deny the repot is fairly accurate talking
 about a good portion of my

12:10:08 life. I grew up in a dysfunctional family. I was
 separated from my mother at

12:11:07 birth. My background has impact on my life. My

12:12:02 adopted father was abusive,
12:12:02 mother incompetent. As a youth I got into
12:13:09 trouble. When I was 15 yrs I was
12:13:09 given by my adoptive mother to the state of CA.
12:14:34 Then placed back wth adoptive
12:14:34 mother. I enrolled in college. Then I got sick
12:16:03 and had to drop out. I looked
12:16:03 for family. Grandparents accepted me back into
12:16:37 the family and helped me with
12:16:37 college. I went to college in South Dakota,
12:24:34 explains.
12:24:34 Then moved to Sandpoint and became reclusive.
12:24:54 After that I went back to
12:24:54 college. I have familiarity with teaching and the
12:27:24 law. These things
12:27:24 are not in the PSI. I then started work with
12:31:12 real estate.

12:31:12 **State Attorney: Wick, Ann**
12:31:12 Can I step out to make a phone call?

12:31:29 **Judge: Hosack, Charles**
12:31:29 Yes. I should mention that I - you're not
12:32:13 really rebutting anything. PSI
12:32:13 investigators have their perspective.

12:32:26 **Defendant: Beavers, Mark**
12:32:26 Continues with right of allucation. I then had
12:35:42 to leave real estate and had
12:35:42 to reorganize my life. I enrolled in NIC.
12:37:08 It has been difficult to bring to bear my
12:37:08 medical records and bring in
12:37:29 experts to testify. I still have these illnesses
12:37:29 and have not received
12:38:46 medical care. I've suffered loss in the last 14
12:38:46 months that I've been in
12:39:47 jail. I was subpoenaed to testify at sentencing
12:39:47 of a person who burglarized my
12:41:05 house. I sat in the parking lot and never did
12:41:05 testify. Whatever I'm required
12:41:40 to do - I'm still sick, and how do I fix that?
12:41:40 Nothing in PSI explains my
12:43:05 medical condition.
12:45:06 Comments regarding medical marijuana states.

12:45:51 **State Attorney: Wick, Ann**

12:46:26 Gives recomm. 06: traff 4 and 5 yrs and 10,000 ;
intent 3 and 2, costs and
12:47:03 concurr. 07: delivery: 3 and 7 for 10 yrs, 5,000
fine. Poss w/intent 3 and 7
12:47:38 for 10, costs, traff: 3 and 12 for 15 and 10,000
fine. Run 06 and 07 cases
consec. He set upon a course of conduct that
was unlawful in Idaho,
12:49:03 comments.
12:49:50 He was out for over a year knowing he was
carrying charges with a max
12:50:12 sentence and set about doing the same thing. Yet
he chose to continue and
12:50:46 flaunt that. He always knows better than
everybody else, and he shouldn't be
12:51:26 punished in Idaho. He blames the system, never
takes responsibility for
12:51:49 himself. The doctor that he wanted to come in
and testify, the state talked
12:53:03 to and he was not going to come in and testify
the way def thinks. He says
12:53:31 he's under medical care but the last he saw
doctors was in 1987. He's very
12:54:22 manipulative, he's never to blame. There needs
to be recognition in this
12:55:07 that he went out and did the same thing, ask for
consec sentences. He should
12:56:27 get longer than 3 yrs fixed from the first case,
there needs to be that
12:56:41 enhancement for longer fixed. I'd ask the court
to not consider the
12:57:16 forfeiture action, it is not done yet.
12:57:36 And ask for restit.

12:57:47 **Public Defender: Anderson, Staci**
Mr Somerton has been attending some of the
hearings, when he is sentenced the
12:58:04 City of CDA will get his house. A tape was
played for the jury as to Mr
12:58:55 Beavers wanting to help people with illness, he
was not making money on this
12:59:13 endeavor. ASK 3 yrs fixed and no indet so that
when he's released he can go
12:59:31 somewhere else where this is legal. He's served
quite a bit of time.

12:59:51 **Judge: Hosack, Charles**
 This is time for sentencing, jury having found
 you guilty of crimes. The
 13:01:33 result of your conduct is that it is criminal.
 There are charges of delivery.
 13:02:04 Delivery or selling is not part of medical
 marijuana. Comments.
 13:04:28 Goals of sentencing can be met with the 15 yrs
 provision. Case 2 man min is
 13:05:10 concur with man minimum in case 1. There is
 room for rehabilitation. Overall
 13:06:45 term of 12 yrs imposed on Ct 3 in second case.
 13:07:02 2 fixed and 10 indet.
 13:07:06 traff in case 1 and count 1: 3 yrs man min.,
 then you have the second case.
 13:08:24 You went out and sold to a CI, repetitive
 conduct. Overall sentence is 12 yrs
 13:09:07 with 3 fixed. Am not applying ~~2729A~~ 2729A, explains.
 Will make a legal finding in
 13:10:46 the second case, in the waiver of the jury trial
 for enhancements, comments
 13:11:50 regarding taking the waiver of the jury, the
 persistent violator was
 13:12:32 withdrawn. Court would find the sentence
 enhancement would not be applicable
 13:13:36 in this case. 06: count I traff: 6, 3 fixed and
 3 indet, 10,000 fine, ct 2:
 13:15:17 poss w/intent, 1 and 4 indet, concur. 07 case:
 ct 1: 5 yrs, 2 and 3 indet, ct
 13:15:35 2: 2 and 3 indet, traff: 2 and includes the
 doubling. cts 1,2,and 3 concur.
 13:16:05 06 and 07 concur. traff: 5,000 fine. Order
 restit., impose court costs and
 13:16:31 fines. Recomm the TC or other counseling
 programs.

13:17:15 **State Attorney: Wick, Ann**
 Questions

13:17:20 **Judge: Hosack, Charles**
 07: poss w/intent/ 5 yrs 3 fixed and 2 indet.
 13:18:15 Discussion re: delivery charge sentence.
 13:18:46 He's going to do 3 fixed on the first case,
 comments, on the traff.
 13:20:18 Del: 2 and 3. Final sentence is 3 fixed and 9
 indet.

FILED 5-1-09 AT 1:49 P.M.
STATE OF IDAHO COUNTY OF KOOTENAI SS
CLERK OF THE DISTRICT COURT
BY [Signature] DEPUTY

**FIRST JUDICIAL DISTRICT COURT, STATE OF IDAHO
IN AND FOR THE COUNTY OF KOOTENAI
324 W. GARDEN AVENUE
COEUR D'ALENE, IDAHO 83814**

STATE OF IDAHO)
Plaintiff,)

vs.)

Mark Beavers)
Defendant.)

DOB: [Redacted])
DL or SSN: [Redacted] ID)

Case No: CR2006-18813
CR2007-27416

JUDGMENT

On Friday, January 30, 2009, before the Honorable Charles W. Hosack, District Judge, you, Mark Beavers, personally appeared for sentencing. Also appearing were Ann Wick, Deputy Prosecuting for Kootenai County, and your counsel, Staci L. Anderson, Deputy Public Defender.

WHEREUPON, the previously ordered presentence report having been filed, and the Court having ascertained that you have had an opportunity to read the presentence report and review it with your lawyer, and you having been given the opportunity to explain, correct or deny parts of the presentence report, and you having been given the opportunity to make a statement, and recommendations having been made by counsel for the State and by your lawyer, and there being no legal reason given why judgment and sentence should not then be pronounced, the Court did then pronounce its sentencing disposition.

IT IS HEREBY ORDERED that you, after exercising your right to a jury trial, and the jury having entered a verdict to the criminal offense(s) charged in the Information on file for each case as follows:

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FURTHER, THAT YOU ARE GUILTY OF THE CRIMES SO CHARGED, and now therefore, pursuant to Idaho Code §19-2513, you are sentenced as follows:

CR2006-18813:

Count 1: Idaho Code §37-2732(B)(a)(1)(B) Trafficking in Marijuana of five (5) pounds or more, but less than twenty-five (25) pounds,
for a total unified sentence not to exceed six (6) years, commencing with a fixed period of three (3) years, to be followed by an additional three (3) year indeterminate sentence, and a fine of \$10,000.00 (ten thousand) dollars.

Count 2: Idaho Code §37-2732(a)(1)(B) Possession of a Controlled Substance with Intent to Deliver, Marijuana,
for a total unified sentence not to exceed five (5) years, commencing with a fixed period of one (1) year, to be followed by an additional four (4) year indeterminate sentence.

The sentences on each count in case CR2006-18813 shall run concurrent.

CR2007-27416:

Count 1: Idaho Code §37-2732(a)(1)(B) Delivery of a Controlled Substance, Marijuana,
for a total unified sentence not to exceed five (5) years, commencing with a fixed period of two (2) years, to be followed by an additional three (3) year indeterminate sentence.

Count 2: Idaho Code §37-2732(a)(1)(B) Possession of a Controlled Substance with Intent to Deliver, Marijuana,
for a total unified sentence not to exceed five (5) years, commencing with a fixed period of two (2) years, to be followed by an additional three (3) year indeterminate sentence.

Count 3: Idaho Code §37-2732B(a)(1)(A) Trafficking in Marijuana of up to twenty-five (25) plants,
and defendant, having waived a jury trial and having admitted to the entry of a jury verdict of guilty in the Trafficking in Marijuana in Count 1 in CR2006-18813, which jury verdict of guilty the Court finds to constitute a prior trafficking offense for purposes of establishing a mandatory minimum fixed term pursuant to Idaho Code Section 37-2732(B)(a)(7) for a second conviction;
for a total unified sentence to not exceed twelve (12) years, commencing with a fixed period of two (2) years, to be followed by an additional indeterminate period of ten (10) years, and a fine of \$5,000.00 (five thousand) dollars.

The sentences imposed in the above counts in CR2007-27416 shall run concurrent with each other. The sentences imposed in CR2007-27416 shall run concurrent with the sentences imposed in CR2006-18813.

IT IS THE RECOMMENDATION OF THIS COURT that you be allowed to participate in the Therapeutic Community, or Community Work Center, or any substance abuse treatment and/or counseling available through the Department of Correction during the period of incarceration.

IT IS FURTHER ORDERED that the Court having found you to have either the present or the future ability to pay, you shall pay court costs of \$110.50 in each case.

1. That you shall pay additional costs, fees, fines and reimbursements as follows in CR2006-18813 only:

- | | | |
|----|-----------------------------------|----------|
| a. | Reimburse prosecution costs | \$150.00 |
| b. | Reimburse the District Court Fund | \$150.00 |
| c. | Reimburse defense costs | \$150.00 |

IT IS FURTHER ORDERED that the Court shall reserve jurisdiction to determine the amount of restitution you shall pay your victim(s) in this matter. The amount of restitution shall be determined from time to time by stipulation of the parties or pursuant to filings by the State.

IT IS FURTHER ORDERED that you are committed to the custody of the Idaho State Board of Correction on Friday, January 30, 2009.

IT IS FURTHER ORDERED that you are remanded to the custody of the Kootenai County Sheriff pending transport to the Idaho State Board of Correction.

IT IS FURTHER ORDERED that you will be given credit for time served on any sentence imposed on the above charge.

IT IS FURTHER ORDERED that any bail posted in this matter shall be exonerated, provided that any deposit shall be applied pursuant to Idaho Code §19-2923.

NOTICE OF RIGHT TO APPEAL

YOU ARE HEREBY NOTIFIED that you have a right to appeal this order to the Idaho Supreme Court. Any notice of appeal must be filed within forty-two (42) days of the entry of the written order in this matter.

YOU ARE FURTHER NOTIFIED that if you are unable to pay the costs of an appeal, you have the right to apply for leave to appeal in forma pauperis or to apply for the appointment of counsel at public expense. If you have questions concerning your right to appeal, you should consult your present lawyer.

DATED this 4 day of February, 2009.



Charles W. Hosack
District Judge

CERTIFICATE OF MAILING/SERVICE

I hereby certify that on the 4 day of February, 2009, copies of the foregoing Judgment were mailed, postage prepaid, faxed, or sent by interoffice mail to:

fax Prosecuting Attorney for Kootenai County (fax 208-446-1833)
fax Defense Attorney Staci L. Anderson (fax 208-446-1701)
fax Idaho Department of Correction (fax 208-327-7445)
fax Probation & Parole (fax 208-769-1481)
fax Kootenai County Sheriff's Department (fax 208-446-1407)

DANIEL ENGLISH
CLERK OF THE DISTRICT COURT

By *Shari R*
Deputy Clerk

ORIGINAL

Staci Anderson, Deputy Public Defender
Office of the Kootenai County Public Defender
PO Box 9000
Coeur d'Alene, Idaho 83814
Phone: (208) 446-1700; Fax: (208) 446-1701
Bar Number: 6867

STATE OF IDAHO
COUNTY OF KOOTENAI
FILED: 188

2009 FEB 13 AM 9:42

CLERK DISTRICT COURT

DEPUTY

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

STATE OF IDAHO,

Plaintiff,

V.

MARK D. BEAVERS,

Defendant.

CASE NUMBER CR-07-0027416

Fel

**MOTION FOR APPOINTMENT OF
STATE APPELLATE PUBLIC DEFENDER
IN DIRECT APPEAL; RETAINING TRIAL
COUNSEL FOR RESIDUAL PURPOSES**

COMES NOW, the above named defendant, by and through his attorney, Staci L Anderson, Deputy Public Defender and hereby moves the Court for an Order pursuant to Idaho Code §19-867, et seq., and Rule 13(b), (12) and (19) for its order appointing the State Appellate Public Defender's Office to represent the Appellant in all further proceedings. This motion is brought on the grounds and for the reasons that the Defendant is currently being represented by the Office of the Public Defender, Kootenai County; the State Appellate Public Defender is authorized by statute to represent the Defendant in all felony appellate proceedings; and it is in the interest of justice, for them to do so in this case since the Defendant is indigent, and any further proceedings on this case will be appealed.

**MOTION FOR APPOINTMENT OF STATE APPELLATE PUBLIC DEFENDER IN
DIRECT APPEAL; RETAINING TRIAL COUNSEL FOR RESIDUAL PURPOSES -1 -**

DATED this 11 day of February, 2009.

OFFICE OF THE KOOTENAI
COUNTY PUBLIC DEFENDER

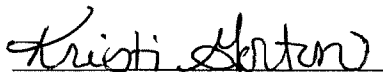
BY:


STACI ANDERSON
DEPUTY PUBLIC DEFENDER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 13 day of February, 2009, served a true and correct copy of the attached MOTION FOR APPOINTMENT OF STATE APPELLATE PUBLIC DEFENDER via interoffice mail or as otherwise indicated upon the parties as follows:

<u>X</u>	Kootenai County Prosecuting Attorney P.O. Box 9000 Coeur d'Alene, Idaho 83816-9000	via Interoffice Mail
<u>X</u>	State Appellate Public Defender 3647 Lake Harbor Lane Boise, Idaho 83703	<input checked="" type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail <input type="checkbox"/> Facsimile (208) 334-2985
<u>X</u>	Lawrence G. Wasden Attorney General P.O. Box 83720 Boise, Idaho 83720-0010	<input checked="" type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail <input type="checkbox"/> Facsimile (208) 854-8074
_____	Reporter for District Judge John T. Mitchell, Julie Foland via Interoffice Mail	
_____	Reporter for District Judge Fred M. Gibler, Byrl R. Cinnamon via Interoffice Mail	
_____	Reporter for District Judge John P. Luster, Anne MacMannus via Interoffice Mail	
<u>X</u>	Reporter for District Judge Charles W. Hosack, JoAnn Schaller via Interoffice Mail	
_____	Reporter for District Judge Lansing Haynes, Laurie Johnson via Interoffice Mail	



ORDER FOR APPOINTMENT OF STATE APPELLATE PUBLIC DEFENDER
IN DIRECT APPEAL; RETAINING TRIAL COUNSEL FOR RESIDUAL PURPOSES -2-

Staci Anderson, Deputy Public Defender
Office of the Kootenai County Public Defender
PO Box 9000
Coeur d'Alene, ID 83814
Phone: (208) 446-1700; Fax: (208) 446-1701
Bar Number: 6867

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

STATE OF IDAHO,)	
	)	CASE NUMBER CR-07-0027416
Plaintiff,	)	Fel
)	
V.	)	ORDER FOR APPOINTMENT OF STATE
	)	APPELLATE PUBLIC DEFENDER IN
	)	DIRECT APPEAL; RETAINING TRIAL
MARK D. BEAVERS,	)	COUNSEL FOR RESIDUAL PURPOSES
)	
)	
Defendant.)	

TO: OFFICE OF THE IDAHO STATE APPELLATE PUBLIC DEFENDER, AND, STACI
L ANDERSON, DEPUTY PUBLIC DEFENDER, KOOTENAI COUNTY.

A judgment having been entered by this Court on January 30, 2009, and the defendant having requested the aid of counsel in pursuing a direct appeal from this district court in this felony matter, and defendant's trial counsel having filed a timely notice of appeal, and the Court being satisfied that said defendant continues to be a needy person entitled to public representation, therefore,

IT IS HEREBY ORDERED, in accordance with I.C. 19-870, that the State Appellate Public Defender is appointed to represent defendant in all further proceedings involving his appeal.

IT IS FURTHER ORDERED that trial counsel shall remain as appointed counsel of record for all other matters involving action in the trial court which, if resulting in an order in defendant's

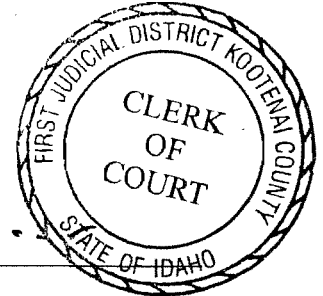
**ORDER FOR APPOINTMENT OF STATE APPELLATE PUBLIC DEFENDER IN
DIRECT APPEAL; RETAINING TRIAL COUNSEL FOR RESIDUAL PURPOSES -1 -**

favor, could affect the judgment, order or sentencing in the action, until the expiration of the time limit for filing said motions or, if sought and denied, upon the expiration of the time for appeal of such ruling with the responsibility to decide whether or not a further appeal will be taken in such matters.

IT IS FURTHER ORDERED that trial counsel shall cooperate with the Office of State Appellate Public Defender in the prosecution of defendant's appeal.

DATED this 19 day of February, 2009.

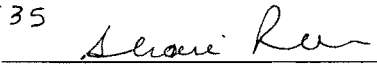

DISTRICT JUDGE



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 23 day of, served a of February, 2009 true and correct copy of the attached ORDER FOR APPOINTMENT OF STATE APPELLATE PUBLIC DEFENDER via facsimile, interoffice mail or as otherwise indicated upon the parties as follows:

<u>X</u>	Kootenai County Public Defender	<input type="checkbox"/>	Interoffice Mail
		<input checked="" type="checkbox"/>	Facsimile (208) 446-1701
<u>X</u>	Kootenai County Prosecuting Attorney	<input type="checkbox"/>	Interoffice Mail
		<input checked="" type="checkbox"/>	Facsimile (208) 446-1833
<u>X</u>	State Appellate Public Defender	<input type="checkbox"/>	First Class Mail
	3647 Lake Harbor Lane	<input type="checkbox"/>	Certified Mail
	Boise, Idaho 83703	<input checked="" type="checkbox"/>	Facsimile (208) 334-2985
<u>X</u>	Lawrence G. Wasden	<input type="checkbox"/>	First Class Mail
	Attorney General	<input type="checkbox"/>	Certified Mail
	P.O. Box 83720	<input checked="" type="checkbox"/>	Facsimile (208) 334-2530
	Boise, Idaho 83720-0010		
<u>X</u>	Supreme Court (certified)	<input type="checkbox"/>	First Class Mail
		<input checked="" type="checkbox"/>	Fax Certified (208) 334-2616
<u>X</u>	Reporter for District Judge Charles W. Hosack, Jo Ann Schaller via Interoffice Mail		
	9357 Fax: Keri Vane 208-667-7435		



**ORDER FOR APPOINTMENT OF STATE APPELATE PUBLIC DEFENDER
IN DIRECT APPEAL; RETAINING TRIAL COUNSEL FOR RESIDUAL PURPOSES -2-**

ORIGINAL

Staci Anderson, Deputy Public Defender
Office of the Kootenai County Public Defender
PO Box 9000
Coeur d'Alene, Idaho 83814
Phone: (208) 446-1700; Fax: (208) 446-1701
Bar Number: 6867

STATE OF IDAHO
COUNTY OF KOOTENAI } SS
FILED:

2009 FEB 13 AM 9:43

CLERK DISTRICT COURT
Theresa L. L...
DEPUTY

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

STATE OF IDAHO,)	
)	
Plaintiff/	)	CASE NUMBER CR-07-0027416
Respondent,	)	Fel
)	
V.	)	NOTICE OF APPEAL
)	
MARK D. BEAVERS,)	
)	
)	
Defendant/)	
Appellant.)	
)	

**TO: THE ABOVE NAMED RESPONDENT, STATE OF IDAHO, AND THE
CLERK OF THE ABOVE ENTITLED COURT:**

1. The above named Appellant hereby appeals against the above named Respondent, the State of Idaho, to the Idaho Supreme Court from the final Judgment and Sentence entered in the above entitled matter on January 30, 2009, the Honorable Charles W. Hosack, presiding.

2. That the party has a right to appeal to the Idaho Supreme Court, and the Judgment described above in paragraph one, is an appealable Judgment under and pursuant to Idaho Appellate Rule 11(c)(1).

3. The issues Appellant intends to assert in this appeal include, but are not necessarily limited to:

Ineffective Assistance of Counsel

4. Appellant requests the preparation of the entire reporter's standard transcript as defined in Rule 25 I.A.R., and to also include the following, pursuant to Rule 25 (b):

All Recorded Proceedings

5. The Appellant requests the following documents to be included in the clerk's record in addition to those automatically included under Rule 28 I.A.R.: None

6. I hereby certify as follows:

A. A copy of this Notice of Appeal has been served upon all court reporters from whom a transcript is requested. The name and address of each such reporter is marked below in the Certificate of Service.

B. The Appellant is exempt from paying the estimated transcript fee because the Appellant is an indigent who is represented by the Office of the Kootenai County Public Defender.

C. The Appellant is exempt from paying the filing fee because the Appellant is an indigent who is represented by the Office of the Kootenai County Public Defender.

D. The Appellant is exempt from paying the estimated fee for the preparation of the record because the Appellant is an indigent who is represented by the Office of the Kootenai County Public Defender.

E. Service has been made upon all parties required to be served pursuant to Rule 20 I.A.R., to wit the Kootenai County Prosecuting Attorney, and the Attorney General of Idaho pursuant to Section 67-1401 (1) Idaho Code.

DATED this 11 day of February, 2009.

OFFICE OF THE KOOTENAI COUNTY
PUBLIC DEFENDER

BY:


STACI L ANDERSON
DEPUTY PUBLIC DEFENDER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 13 day of February, 2009, served a true and correct copy of the attached NOTICE OF APPEAL via interoffice mail or as otherwise indicated upon the parties as follows:

X Kootenai County Prosecuting Attorney via Interoffice Mail
P.O. Box 9000
Coeur d'Alene, Idaho 83816-9000

X Molly J. Huskey ☒ First Class Mail
State Appellate Public Defender ☐ Certified Mail
3647 Lake Harbor Lane ☐ Facsimile (208) 334-2985
Boise, Idaho 83703

X Lawrence G. Wasden ☒ First Class Mail
Attorney General ☐ Certified Mail
P.O.Box 83720 ☐ Facsimile (208) 854-8074
Boise, Idaho 83720-0010

Reporter for District Judge John T. Mitchell, Julie Foland (Kootenai County, PO Box 9000, Coeur d'Alene, ID 83816) via Interoffice Mail

Reporter for District Judge Fred M. Gibler, Byrl R. Cinnamon (Kootenai County, PO Box 9000, Coeur d'Alene, ID 83816) via Interoffice Mail

Reporter for District Judge John P. Luster, Anne MacMannus (Kootenai County, PO Box 9000, Coeur d'Alene, ID 83816) via Interoffice Mail

X Reporter for District Judge Charles W. Hosack, JoAnn Schaller (Kootenai County, PO Box 9000, Coeur d'Alene, ID 83816) via Interoffice Mail

Reporter for District Judge Lansing Haynes, Laurie Johnson (Kootenai County, PO Box 9000, Coeur d'Alene, ID 83816) via Interoffice Mail



In the Supreme Court of the State of Idaho

STATE OF IDAHO
COUNTY OF KOOTENAI
FILED: 3-6-09
AT 9:37 O'CLOCK AM
CLERK, DISTRICT COURT

STATE OF IDAHO,

Plaintiff-Respondent,
v.

MARK D. BEAVERS,

Defendant-Appellant.

ORDER CONSOLIDATING APPEALS

Supreme Court Docket No. 36183-2009/
36191-2009
Kootenai County Docket No. 2007-27416/
2008-18813

It appearing that these appeals should be consolidated for all purposes for reasons of judicial economy; therefore, good cause appearing,

IT HEREBY IS ORDERED that appeal No. 36183 and 36191 shall be CONSOLIDATED FOR ALL PURPOSES under No. 36183, but all documents filed shall bear both docket numbers.

IT FURTHER IS ORDERED that the District Court Clerk shall prepare a CLERK'S RECORD, which shall include the documents requested in the Notices of Appeal, together with a copy of this Order.

IT FURTHER IS ORDERED that the District Court Reporter shall prepare a REPORTER'S TRANSCRIPT, which shall include the transcripts requested in the Notices of Appeal.

DATED this 3rd day of March 2009.

For the Supreme Court

Dorothy Beaver for
Stephen W. Kenyon, Clerk

Cc: Counsel of Record
District Court Clerk
District Court Reporter

WILLIAM J. DOUGLAS
Prosecuting Attorney
501 Government Way/Box 9000
Coeur d'Alene, ID 83816-9000
Telephone: (208) 446-1800

ASSIGNED ATTORNEY:
ANN WICK

STATE OF IDAHO
COUNTY OF KOOTENAI
FILED: 188

2009 MAR -9 PM 4: 07

CLERK DISTRICT COURT
Sherrill
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,)	
	)	Case Nos. CRF07-27416
Plaintiff,)	
vs.	)	MOTION TO CORRECT AN
	)	ILLEGAL SENTENCE
MARK D. BEAVERS,)	
Defendant.)	
_____)	

COMES NOW, ANN WICK, Deputy Prosecuting Attorney, and hereby moves this court to correct the sentence previously imposed in this case, pursuant to Idaho Criminal Rule 35. Specifically, the State seeks the correction of the illegal sentence imposed upon Defendant's conviction for delivering a controlled substance.

FACTS

After having been found guilty by two juries for crimes involving controlled substances, and after having knowingly, voluntarily, and intelligently admitted the allegations contained in Parts II, III, and IV of the Amended Information in Kootenai County Case No. F07-27416, Defendant Beavers was sentenced on January 30, 2009, for convictions in two cases. In this case, CRF07-27416, Defendant was sentenced for convictions of Trafficking in Marijuana, Delivery of Marijuana, and Possession of Marijuana with the Intent to Deliver. In a sentencing memorandum and at the sentencing hearing, the State argued that the sentence upon the Delivery conviction must include a

mandatory minimum fixed term of imprisonment of not less than three years and that such sentence shall run consecutive to any other sentence imposed. On the Delivery conviction, the Court sentenced the Defendant to a unified five-year sentence consisting of two (2) years fixed and three (3) years indeterminate. The Court then ordered that this sentence run concurrent with all the other sentences imposed at the same time, in both Case No. F07-27416 and Case. No. F06-18813.

APPLICABLE LAW

Delivery of Marijuana is punishable up by a term of imprisonment up to five years and a fine of up to \$15,000. I.C. § 37-2732(a)(1)(B). However, I.C. § 37-2739A provides:

Any person who is convicted of violating the felony provisions of section 37-2732(a), Idaho Code, by distributing controlled substances to another person, who is not subject to a fixed minimum term under section 37-2739B, Idaho Code, and who has previously been convicted with the past ten (10) years in a court of . . . any state . . . of one or more felony offenses of dealing, selling or trafficking in controlled substances on an occasion or occasions different from the felony violation of section 37-2732(a), Idaho Code, and which offense or offenses were punishable in such court by imprisonment in excess of one (1) year, shall be sentenced to the custody of the state board of correction for a mandatory minimum period of time not less than three (3) years or for such greater period as the court may impose up to a maximum of life imprisonment. The mandatory minimum period of three (3) years incarceration shall not be reduced and shall run consecutively to any other sentence imposed by the court.

In *State v. Way*, 117 Idaho 594 (Ct. App. 1990), the Idaho Court of Appeals held that I.C. § 37-2739A requires the “minimum three-year term run consecutively to any other sentence imposed *at the same time*.” *Way*, at 597 (emphasis in original) (holding that it was permissible to run the enhanced sentence concurrent with a sentence previously imposed on an earlier case).

ARGUMENT

Defendant’s Sentence on the Delivery Conviction in Case No. F07-27416 is Illegal, and Defendant Must be Sentenced to At Least A Consecutive Three Years of Prison.

The enhancement of a consecutive three years of prison found in I.C. § 37-2739A applies to any person who is convicted of violating the felony provisions of I.C. § 37-2732(a), by

distributing controlled substances to another person. Defendant Beavers was convicted by a jury of a violation of I.C. § 37-2732(a) for delivering a controlled substance (marijuana) to an undercover police detective. *See U.S. v. Sharp*, 145 Idaho 403, 179 P.3d 1059 (2008) (holding that a finding of guilt by a jury is a conviction). The enhancement next requires that such a person not be subject to a fixed minimum term under I.C. § 37-2739B. Defendant Beavers is not subject to a fixed minimum term under I.C. § 37-2739B.

The enhancement also requires that a person have been previously convicted within the past 10 years of at least one felony offense of dealing, selling or trafficking in controlled substances. As of October 30, 2008, when he was convicted of Delivery of Marijuana, Defendant Beavers had been previously convicted, on June 19, 2008, of the felony offense of trafficking in a controlled substance, as well as the felony offense of possession with intent to deliver, which can be said to constitute dealing. Finally, the enhancement requires that the previous conviction be punishable by imprisonment in excess of one year. Both of Defendant's previous convictions (Trafficking and Possession with Intent to Deliver) carry maximum punishments of over one year imprisonment.

If all of the above requirements are met, I.C. § 37-2739A clearly dictates that the court shall impose a mandatory minimum period of three years incarceration which shall not be reduced and shall run consecutively to any other sentence imposed by the court. *State v. Way* does not change this analysis, other than to add that "any other sentence imposed" refers to any other sentence imposed *at the same time*. *Way*, at 597. As occurred in *Way*, this means that if a sentencing court is entering judgment in a case involving only one conviction, and that conviction carries the mandatory enhancement contained in I.C. § 37-2739A, then the enhanced sentence can be run concurrently with any sentences that have been previously imposed. The

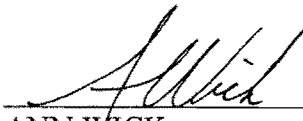
enhanced sentence cannot be run concurrently with any other sentences imposed at the same time as the enhanced sentence, regardless of whether or not those sentences are in the same case as the enhanced sentence.

In the present case the Court is required to impose a minimum three-year fixed term of imprisonment upon Defendant's conviction of Delivery in Case No. F07-27416. The Court is further required to run that sentence consecutive to all the other sentences imposed in F07-274156 and F06-18813, since these sentences were all imposed at the same time, on the same day, at the same sentencing hearing. At a bare minimum, the enhanced sentenced must run consecutive to the sentences imposed in the same case (F07-27416). The sentence imposed by the Court on January 30, 2009, on the Delivery conviction, is therefore illegal and must be corrected in conformity with the requirements of I.C. § 37-2739A and *State v. Way*.

CONCLUSION

For the foregoing reasons, the Court should correct the sentence imposed in F07-27416, in the manner articulated above.

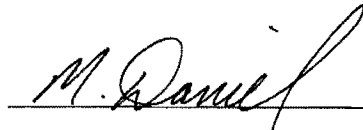
DATED this 9th day of March, 2009.


ANN WICK
Deputy Prosecuting Attorney

CERTIFICATE OF MAILING

I hereby certify that on the 9 day of March, 2009, a true and correct copy of the foregoing was mailed, faxed, and/or hand-delivered to:

STACI ANDERSON
PUBLIC DEFENDER'S OFFICE



LAWRENCE G. WASDEN
 Attorney General
 State of Idaho
 P.O. Box 83720
 Boise, ID 83720-0010
 (208) 334-4534

STEPHEN A. BYWATER
 Deputy Attorney General
 Division Chief - Criminal Division

KENNETH K. JORGENSEN
 ISB #4051
 Deputy Attorney General

STATE OF IDAHO
 COUNTY OF KOOTENAI } SS
 FILED:

2009 MAR -9 PM 1:40

CLERK DISTRICT COURT
 DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
 OF THE STATE OF IDAHO, IN AND FOR KOOTENAI COUNTY

STATE OF IDAHO,)	
	)	Case No. CR 2007-27416
	)	Case No. CR 2006-18813
)	
Plaintiff/Respondent/	)	Supreme Ct. No. 36183
Cross-Appellant,	)	Supreme Ct. No. 36191
)	
vs.	)	NOTICE OF CROSS APPEAL
)	
MARK D. BEAVERS,)	
)	
Defendant/Appellant/)	
Cross-Respondent.)	

TO: THE ABOVE NAMED APPELLANT/CROSS-RESPONDENT,
 MARK D. BEAVERS, AND HIS ATTORNEY, MOLLY J. HUSKEY, STATE
 APPELLATE PUBLIC DEFENDER, 3647 LAKE HARBOR LANE, BOISE,
 IDAHO 83703 AND THE CLERK OF THE ABOVE ENTITLED COURT:

NOTICE IS HEREBY GIVEN THAT:

1. The above named respondent/cross-appellant, State of Idaho,
 cross appeals against the above named appellant/cross-respondent to the Idaho

Supreme Court from the District Court's Judgment entered in the above entitled action on the 4th day of February 2009, the Honorable Charles Hosack presiding.

2. The State has a right to cross-appeal to the Idaho Supreme Court, and the judgment described in paragraph 1 above is appealable pursuant to Rules 11(c)(1) and 15, I.A.R.

3. The issue on appeal concerns the legality of the sentence imposed.

4. The cross-appellant requests inclusion of a transcript of the sentencing hearing, held January 30, 2009, if it is not included in the record requested by the Appellant. Cross-appellant does not otherwise request any additional record or transcript. Cross-appellant requests the preparation of the transcript in compressed form as described in I.A.R. 26(c).

5. The Cross-appellant does not request additional documents to be included in the clerk's record.

6. I certify that:

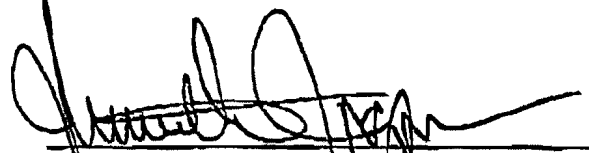
(a) A copy of this Notice of Cross-Appeal is being served on the reporter;

(b) The cross-appellant is exempt from paying the estimated fee for the preparation of the record because the State of Idaho is the cross-appellant (Idaho Code § 31-3212);

(c) There is no appellate filing fee since this is a cross-appeal in a criminal case (I.A.R. 23(a)(8));

(d) Service is being made upon all parties required to be served pursuant to Rule 20, I.A.R.

DATED this 9th day of March 2009.



KENNETH K. JORGENSEN
Deputy Attorney General
Attorney for the Cross-appellant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 9th day of March 2009, caused a true and correct copy of the attached NOTICE OF CROSS-APPEAL by causing a copy addressed to:

MOLLY J. HUSKEY
STATE APPELLATE PUBLIC DEFENDER

to be placed in The State Appellate Public Defender's basket located in the Idaho Supreme Court Clerk's office.

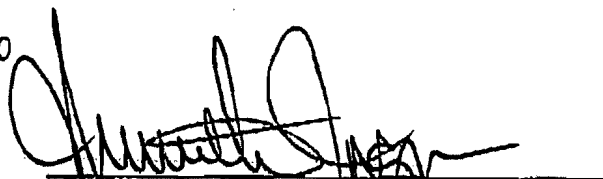
and

by United States mail, postage prepaid, addressed to:

THE HONORABLE CHARLES HOSACK
Kootenai District Judge
P.O. Box 9000
Coeur d'Alene, ID 83816-9000

JO ANN SCHALLER
Court Reporter
P.O. Box 9000
Coeur d'Alene, ID 83816-9000

KOOTENAI COUNTY PROSECUTOR'S OFFICE
P.O. Box 9000
Coeur d'Alene, ID 83816-9000



KENNETH K. JORGENSEN
Deputy Attorney General

KKJ/pm

MOLLY J. HUSKEY
State Appellate Public Defender
State of Idaho
I.S.B. # 4843

SARA B. THOMAS
Chief, Appellate Unit
I.S.B. # 5867
3647 Lake Harbor Lane
Boise, Idaho 83703
(208) 334-2712

STATE OF IDAHO
COUNTY OF KOOTENAI } SS
FILED:

2009 APR -9 PM 4:35

CLERK DISTRICT COURT
Shirley Miller
DEPUTY
PD

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR KOOTENAI COUNTY

STATE OF IDAHO,

Plaintiff-Respondent,

v.

MARK BEAVERS,

Defendant-Appellant.

CASE NO. CR 2007-27416

S.C. DOCKET NO. ____

AMENDED
NOTICE OF APPEAL

TO: THE ABOVE-NAMED RESPONDENT, STATE OF IDAHO, AND THE PARTY'S ATTORNEYS, BILL DOUGLAS, KOOTENAI COUNTY PROSECUTOR, P.O. BOX 9000, 500 GOVERNMENT WAY, COEUR D'ALENE, ID, 83816-9000, AND THE CLERK OF THE ABOVE-ENTITLED COURT:

NOTICE IS HEREBY GIVEN THAT:

1. The above-named appellant appeals against the above-named respondent to the Idaho Supreme Court from the Final Judgment and Sentence entered in the above-entitled action on the 30th day of January, 2009, the Honorable Charles W. Hosack, presiding.
2. That the party has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Idaho Appellate Rule (I.A.R.) 11(c)(1-10).

3. A preliminary statement of the issues on appeal, which the appellant then intends to assert in the appeal, provided any such list of issues on appeal shall not prevent the appellant from asserting other issues on appeal, is:

- (a) Did appellant's counsel fail to provide effective assistance of counsel?

4. There is a portion of the record that is sealed. That portion of the record that is sealed is the Presentence Investigation Report (PSI).

5. **Reporter's Transcript.** The appellant requests the preparation of the **entire reporter's standard transcript** as defined in I.A.R. 25(c). The appellant also requests the preparation of the additional portions of the reporter's transcript:

- (a) ~~All Recorded Proceedings;~~
- (b) Pre-trial Conference held April 14, 2008 (Joanne Schaller, Court Reporter, no estimate of pages included in the Register of Actions);
- (c) Pre-Trial Conference, held August 8, 2008 (Joanne Schaller, Court Reporter, no estimate of pages included in the Register of Actions);
- (d) Pre-Trial Conference, held September 8, 2008 (Joanne Schaller, Court Reporter, no estimate of pages included in the Register of Actions);
- (e) Pre-Trial Conference, held October 9, 2008 (Joanne Schaller, Court Reporter, no estimate of pages included in the Register of Actions);

- 04/03/2000 10:00 FAX 200 001 2000
CIVIL MIDDLEBURY
000/00/
- (g) Trial held October 28-30, 2008, to include the voir dire, opening statements, closing arguments, jury instruction conferences, reading of the jury instructions, any hearings regarding questions from the jury during deliberations, return of the verdict, and any polling of the jurors (Court Reporter: JoAnn Schaller, no estimation of pages was listed on the Register of Actions);
 - (b) Interim Hearing held on January 21, 2009 (Court Reporter: JoAnn Schaller, not estimation of pages was listed on the Register of Actions); and
 - (c) Sentencing Hearing held on January 30, 2009 (Court Reporter: JoAnn Schaller, no estimation of pages was listed on the Register of Actions).

6. **Clerk's Record.** The appellant requests the standard clerk's record pursuant to I.A.R. 28(b)(2). The appellant requests the following documents to be included in the clerk's record, in addition to those automatically included under I.A.R. 28(b)(2):

- (a) Affidavit of Probable Cause filed November 23, 2007;
- (b) Pretrial Services Evaluation filed November 23, 2007;
- (c) Search Warrant Returned filed November 29, 2007;
- (d) Inventory of Seized Property filed November 29, 2007;
- (e) Transcript of Preliminary Hearing held December 17, 2007, filed February 8, 2008;

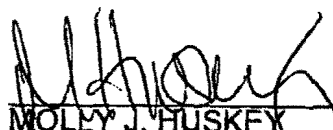
- (f) Deposition of Anne Nord filed April 14, 2008;
- (g) Witness list – Plaintiff's filed October 22, 2008;
- (h) All proposed and Given Jury Instructions, including, but not limited to, Plaintiff's Requested Jury Instructions filed October 27, 2008, Jury Instruction Given filed October 30, 2008, and Part II, Jury Instruction No. 1 filed October 30, 2008;
- (i) Notice of Intent to Use I.R.E. 404(b) Evidence filed October 27, 2008;
- (j) Inmate Request Form filed October 27, 2008;
- (k) Memorandum in Support of Motion in Limine lodged October 28, 2008;
- (l) Stipulation filed October 29, 2008;
- (m) Miscellaneous filed October 30, 2008;
- (n) State's Sentencing Memorandum filed January 23, 2009;
- (o) Defendant's Response to State's Sentencing Memorandum filed January 29, 2009; and
- (p) Any exhibits, including but not limited to letters or victim impact statements, addendums to the PSI or other items offered at sentencing hearing.

7. I certify:

- (a) That a copy of this Amended Notice of Appeal has been served on the Court Reporter, Joann Schaller;

- (b) That the appellant is exempt from paying the estimated fee for the preparation of the record because the appellant is indigent. (Idaho Code §§ 31-3220, 31-3220A, I.A.R. 24(e));
- (c) That there is no appellate filing fee since this is an appeal in a criminal case (Idaho Code §§ 31-3220, 31-3220A, I.A.R. 23(a)(8));
- (d) That arrangements have been made with Kootenai County who will be responsible for paying for the reporter's transcript, as the client is indigent, I.C. §§ 31-3220, 31-3220A, I.A.R. 24(e); and
- (e) That service has been made upon all parties required to be served pursuant to I.A.R. 20.

DATED this 9th day of April, 2009.



MOLLY J. HUSKEY
State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 9th day of April, 2009, caused a true and correct copy of the attached AMENDED NOTICE OF APPEAL to be placed in the United States mail, postage prepaid, addressed to:

STACI ANDERSON
KOOTENAI COUNTY PUBLIC DEFENDERS OFFICE
500 GOVERNMENT WAY SUITE 300
PO BOX 9000
COEUR D ALENE ID 83816 9000

JOANN SCHALLER
PO BOX 9000
COEUR D ALENE ID 83816 9000

BILL DOUGLAS
KOOTENAI COUNTY PROSECUTORS OFFICE
PO BOX 9000
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KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
PO BOX 83720
BOISE ID 83720 0010
Hand delivered to Attorney General's mailbox at Supreme Court



HEATHER R. CRAWFORD
Administrative Assistant

MJH/TMF/SBT/hrc

FILED 4-14-09 AT 9:10 A. M.
STATE OF IDAHO, COUNTY OF
KOOTENAI SS
CLERK OF THE DISTRICT COURT

BY *Shawna* DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,)	Case No. CR2007-27416
)	
Plaintiff,)	
)	
vs.	)	MEMORANDUM AND ORDER
	)	DENYING RULE 35 MOTION
MARK BEAVERS,)	
)	
Defendant,)	
_____)	

The State has filed a motion to correct an illegal sentence. The State argues that the sentence imposed on the Delivery of Marijuana charge in count I of the Amended Information was illegal. The Delivery charge is a violation of Idaho Code §37-2732(a)(1)(B), for which the maximum term is five (5) years of imprisonment. The Court imposed a unified sentence of five (5) years, with two (2) years fixed, followed by three (3) years indeterminate.

The State alleges the sentence is illegal because of a misapplication of the mandatory minimum penalty provisions of Idaho Code §37-2739A. The State had properly alleged Section 37-2739A in Part III of the Amended Information as an enhancement to the Delivery charge set forth in Count I.

The Court agrees with the State that Section 37-2739A does require that the sentence imposed on the conviction of the defendant on the Delivery charge set forth in Count I of the Amended Information in this case set a fixed term of not

less than three (3) years. The Court recognizes that the sentence imposed was for a fixed term of two (2) years.

The sentence imposed does not follow the provisions of Section 37-2739A. However, the reason the Court did not apply three (3) years fixed was because the Court found that the defendant had not knowingly waived his right to a jury trial on the State's allegations in Part III of a previous felony conviction triggering the Section 37-2739A enhancement. For reasons discussed below, the Court held that it would be inappropriate to apply Section 37-2739A, because of the improper waiver of defendant's right to a jury trial on the issue of the sentence enhancement.

The Court would have mooted any dispute over the improper waiver by simply imposing three (3) years fixed on the Delivery count. However, this is an unusual case, with somewhat unique sentencing issues which this Court anticipated would be revisited by both sides on appeal. By imposing two (2) years fixed, the Court clearly identified its finding that Section 37-2739A would not be applied in this case. The defendant's waiver of his right to a jury trial, on Part III of the Amended Information setting forth the factual basis for the enhancement, was not done knowingly. The defendant was not informed and therefore did not understand the potential sentencing consequences of the enhancement provisions of Section 37-2739A.

The Court does not make sentencing decisions based upon an effort to illustrate potential legal issues that could be raised on an anticipated appeal. The imposition of two (2) years fixed was appropriate because two (2) years fixed adequately meets the goals of sentencing.

Mr. Beavers was before this Court on the two cases involved herein¹ for a long period of time. In the first case, defendant bonded out and while out on bail committed the acts alleged in the amended Information in this case. Needless to say, defendant was returned to an in custody status, and has remained there since. Both cases had extended pretrial proceedings. Both cases eventually went

¹ The first case (CR2006-18813) was the case which contains the predicate trafficking conviction alleged in Part III of the Amended Information of this case (CR2007-27416) which charges the enhanced penalties of Section 37-2739A.

to trial. Although a visiting judge tried this case, this Court nonetheless is fairly well acquainted with the history and background of the case, including the conduct of the trial.

This Court presided over sentencing in both cases. Although the cases involved events at different dates in time, and the cases were tried separately, the two cases were most appropriately addressed in one sentencing proceeding, as the acts in both cases were interrelated.

The Court is quite comfortable that the sentencing scheme of fifteen (15) years maximum, with at least three (3) years fixed, was more than adequate to meet the goals of sentencing in these cases. The conviction on the trafficking charge in CR2006-18813 case required a minimum of three (3) years fixed. Except for the brief period of time while defendant was out on bond on the first case and before he was arrested for the acts charged in the second case, defendant has been held on both cases, and is entitled to very similar credit for time served on both cases. Essentially this Court concluded that the three (3) years fixed on the trafficking charge in the condition precedent case (CR2006-18813) met the goals of sentencing for a fixed term on all convictions in both cases. In this very unusual case, imposing the sentence of only two (2) years fixed on the Delivery charge did not adversely affect the Court's ability to achieve the goals of sentencing under Idaho law for all charges in both cases.

In terms of meeting the goals of sentencing, it was this Court's conclusion that the enhanced mandatory minimum of two (2) years fixed on the trafficking charge on Count III in this case met the goals of sentencing for the fixed portion of the sentence imposed on each conviction in this case. Therefore, the Court imposed two (2) years fixed on the Delivery conviction, to match and run concurrently with the two (2) years fixed imposed on the trafficking conviction.

While the State of course does not agree that the Court was correct in not applying the three (3) year mandatory minimum term required by Section 37-2739A, the issue raised on the Motion to Correct Illegal Sentence is whether, assuming the Court should have applied Section 37-2739A, the Court is required by law to apply the three (3) years mandatory minimum enhancement of Section

37-2739A consecutively to the sentences imposed on either or both the convictions in CR2006-18813 and CR-2007-27416. Both the Court and the State agree that (setting aside the jury waiver issue) Section 37-2739A required a three (3) year fixed to be imposed on at least the Delivery conviction in this case. The Court, however, in deciding the jury waiver issue, held that Section 37-2739A could be applied concurrently to all other sentences imposed other than the sentence on the delivery charge in case two. The State on the other hand maintains that the three (3) years has to be imposed consecutive to all of the sentences imposed in both cases or at the very least to the sentences for the other convictions in CR-2007-27416.

While the State is not clear whether the mandatory minimum is required to be imposed consecutively to the sentences in both cases or just the sentences in CR-2007-27416, the State is clear that the Court's holding, that Section 37-2739A requires a three (3) year mandatory minimum to run consecutively only to any other sentence imposed on the delivery charge, is incorrect. Essentially the State argues that there were several sentences imposed against the defendant, in addition to the sentence for the delivery conviction, and that the Section 37-2739A enhancement should run consecutively to more than one of those other sentences, if not all of them.

A Three (3) Year Fixed Sentence Meets the §37-2739A Requirement of a Three (3) Year Mandatory Minimum Running Consecutively.

The Court has held that Section 37-2739A was an effort by the 1981 Legislature to require a court to impose at least three (3) years fixed as a minimum on any conviction of a violation of Section 37-2732(a), if such conviction followed a prior felony conviction for the same kind of crime (ie: felony offenses of dealing, selling, or trafficking in controlled substances.)

The last sentence of Section 37-2739A reads as follows:

"The mandatory minimum period of three (3) years incarceration shall not be reduced and shall run consecutively to any other sentence imposed by the court." (emphasis added)

In essence the State disagrees with the Court's interpretation of the legislative intent of the phrase "to any other sentence imposed by the court" in Section 37-2739A. The question is as to what is meant by running consecutively "to any other sentence imposed by the court".

First, this Court begins its analysis by noting that Section 37-2739A was enacted in 1981, at a time prior to the enactment of Idaho's current unified sentencing law, and prior to most, if not all, of the present statutes imposing a mandatory fixed term. For example, as of 1981, the statutes requiring mandatory minimum sentences for delivery of certain defined amounts of controlled substance, known as "trafficking", did not exist, as Section 37-2732B was not added until 1992. The unified sentencing provisions of Section 19-2513, which allowed a judge to fix² a portion of an overall sentence was not enacted until 1986. In 1981, a delivery charge for marijuana in an amount that qualifies for the mandatory minimums of trafficking the statute imposes today was subject to a term of up to five (5) years. Unless the fixed portion was set at five (5) years, the entire five (5) year term was indeterminate. State v. DuValt, 126 Idaho 33 (Ct. App. 1994).

Second, Section 37-2739A was enacted for purposes of applying to a case where the only conviction upon which a sentence was being pronounced was a delivery violation of Section 37-2732(a). In other words, the phrase "any other sentence imposed by the court" has to apply to a case where the only sentence the court is imposing is for a delivery violation of Section 37-2732(a). It makes no sense to this Court that the Legislature would have contemplated the three (3) year mandatory minimum in Section 37-2739A as applying consecutively only where there was a delivery conviction and the defendant was being sentenced on other convictions at the same time.

With this perspective in mind, this Court construes the phrase "consecutively to any other sentence imposed" to be language utilized to require that, in a case where a sentence was being imposed on a conviction for what

² A "fixed" portion is a time period during which the defendant would be ineligible for parole.

was a second offense for felony delivery, a mandatory minimum of three (3) years was required, and the three (3) years mandatory minimum (i.e. fixed) would run consecutively to the sentence being imposed on the delivery conviction.

This use of the term “consecutively” has been expressly disapproved to describe enhancements. See State v. Ewell, 09.2 ICAR 41, filed January 13, 2009. This language is cumbersome, if not confusing, when there is only one sentence being imposed. Ewell is a 2009 case, and the language in Section 37-2739A is from 1981.

In State v. Way, 117 Idaho 594 (Ct. App. 1990) the Court of Appeals held that the minimum three (3) year term ran consecutively to “any other sentence imposed at the same time by the court for a felony violation of Section 37-2732(a)” Way, 117 Idaho at 597. The Court held that this was satisfied by a ten (10) year fixed sentence where the trial court ordered the ten (10) year fixed to include the three (3) year minimum. Additionally the Court of Appeals held that the trial court did not abuse its discretion by imposing the ten (10) year fixed enhancement concurrent with the portion of the sentence still remaining on the original sentence to be served as a result of a parole revocation.

Based upon this Court's interpretation of the statute, and its reading of Way, the Court concludes that a three (3) year minimum fixed on the delivery count in this case, imposed concurrently with the sentences imposed on the other charges for which the defendant was sentenced at the sentencing hearing would fully comply with the mandate of Section 37-2739A. In essence, the three (3) year mandatory minimum of Section 37-2739A is met by a 3 year fixed, which would be running consecutively to a fixed term of zero with an indeterminate term to follow.

Ineffective Waiver of Right to Jury Trial

Nonetheless, the Court has not applied the mandatory minimum of the three (3) years required by Section 37-2739A to the Delivery count for which

defendant has been sentenced in this case. Although Part III of the Amended Information alleging the enhancement has been tried to the Court, and the Court found that the required predicate of the prior conviction has been proven beyond a reasonable doubt, as mentioned above, the Court is not applying the provision because this Court finds that defendant did not knowingly waive his right to a jury trial.

In State v. Cheatham, 139 Idaho 413 (Ct. App. 2003), the Court of Appeals held that a stipulation to the truth of a persistent violator allegation amounts to a waiver of the right to trial by jury. The Court of Appeals held that the waiver of the right to a jury trial will only be valid if the record shows the defendant did so knowingly. The waiver must be made knowingly "in the sense that the defendant understands the potential sentencing consequences." The Court of Appeals noted that a finding of a persistent violator is a "dramatic" detriment for a defendant.

In this case, the application of Section 37-2739A to the Delivery charge in Count I increased the sentencing from a term of imprisonment of not to exceed five (5) years to a potential life term, with at least three (3) years fixed. The detriment is similar to the persistent violator provision. Just the imposition of a three (3) year mandatory fixed for a crime which previously had a maximum sentence of five (5) years could be considered to be "dramatic" by a person being sentenced. It is hard to imagine that anyone would consider an increase in the maximum term from five (5) years to life imprisonment as anything less than dramatic. There is no claim that defendant in this case was advised that Section 37-2739A required a three (3) year mandatory minimum or could be up to a term of life. Even if the State were correct in its interpretation of Section 37-2739A, the defendant was not advised of potential sentencing consequences under that interpretation. For instance the State urges either a possible five (5) year mandatory minimum (the three (3) years running consecutively to the two (2) year mandatory minimum imposed in the conviction of trafficking as charged in Count III) or a possible six (6) year mandatory minimum, (the three (3) years under Section 37-2739A on the Delivery conviction in this case running

consecutively to the three (3) years fixed imposed on the Trafficking charge in case CR2006-18813). The record does not reflect that the defendant was advise of the various possibilities. Even at this point, focusing on this Court's interpretation of 37-2739A, the Defendant should have been advised of the three (3) year fixed, with the indeterminate enhanced from five (5) years to life. But no such disclosure appears in the record.

This Court is unable to find that this defendant understood the potential sentencing consequences of the enhancements of three (3) years fixed and a potential life term from what was previously a five (5) year maximum sentence, for which the fixed portion could be zero. Since a two (2) year fixed meets the goals of sentencing on the convictions in this case, the Court imposed two (2) years fixed on the Delivery conviction, because that meets the goals of sentencing, and the Court is not legally required to impose three (3) years.

Conclusion

In reaching the jury waiver issue, the Court, at least impliedly, indicated that, absent the jury waiver issue, the Court would have applied Section 37-2739A and imposed a three (3) year fixed on the Delivery count, but that the three (3) year fixed would have been run concurrently with the three (3) years fixed imposed on the Trafficking conviction in the previous case of CR2006-18813 and with the two (2) years fixed imposed on the trafficking charge in CR-2007-27416. The Court agrees with the State that if the Court's interpretation of Section 37-2739A is incorrect, then such a concurrent sentence would be illegal because, the three (3) years fixed mandatory minimum would not have been run consecutively to the fixed portion of any other sentences imposed by the Court on the same day.


For purposes of the Rule 35, the issue is not whether the two (2) year, rather than a three (3) year, fixed on the Delivery charge in this case was illegal. That issue turns on whether this Court was correct in choosing not to apply Section 37-2739A because of the defendant's defective waiver of his right to a

jury trial, and is not raised on the Rule 35 motion. The issue argued by the State on the Rule 35 is that the sentence on the Delivery charge in this case is illegal because the fixed term is running concurrently with the fixed portions of the other sentences, rather than consecutively. However, for reasons stated above, this Court finds that the requirement in §37-2739A of running the three (3) year mandatory minimum consecutively is met as long as at least three (3) years fixed is included on the sentence imposed on the Delivery conviction. Even if Section 37-2739A applied, a sentence of three (3) fixed on the Delivery conviction is a legal sentence. The mandatory minimum of three (3) years fixed is running consecutively to a sentence of zero fixed, followed by whatever term of indeterminate years the sentence on the delivery conviction has imposed (e.g. A 5 year unified sentence on the delivery charge, with 3 years fixed, to be followed by 2 years indeterminate, for a total sentence not to exceed 5 years, would be a legal sentence).

ORDER

For reasons stated above, the State's ICR 35 Motion to Correct an Illegal Sentence is hereby denied.

DATED this 13 day of April, 2009.



CHARLES W. HOSACK, DISTRICT JUDGE

I hereby certify that on the 17 day of April, 2009, a true and correct copy of the foregoing was mailed/delivered by regular U. S. Mail, postage prepaid, Interoffice Mail, Hand Delivered or Faxed to:

724 Kootenai County Prosecuting Attorney (Fax: 208-446-1133)

726 Kootenai County Public Defender (Fax: 208-446-1701)

¹⁵⁵
DANIEL J. ENGLISH
CLERK OF THE DISTRICT COURT

BY: Shari Keen
Deputy Clerk

MOLLY J. HUSKEY
State Appellate Public Defender
State of Idaho
I.S.B. # 4843

2009 APR 15 AM 8:20

SARA B. THOMAS
Chief, Appellate Unit
I.S.B. # 5867
3647 Lake Harbor Lane
Boise, Idaho 83703
(208) 334-2712

CLERK DISTRICT COURT
[Signature]
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR KOOTENAI COUNTY

STATE OF IDAHO,

Plaintiff-Respondent,

v.

MARK BEAVERS,

Defendant-Appellant.

CASE NO. CR 2006-18813

S.C. DOCKET NO. 36191

AMENDED
NOTICE OF APPEAL

TO: THE ABOVE-NAMED RESPONDENT, STATE OF IDAHO, AND THE
PARTY'S ATTORNEYS, BILL DOUGLAS, KOOTENAI COUNTY
PROSECUTOR, P.O. BOX 9000, 500 GOVERNMENT WAY, COEUR D'ALENE,
ID, 83816-9000, AND THE CLERK OF THE ABOVE-ENTITLED COURT:

NOTICE IS HEREBY GIVEN THAT:

1. The above-named appellant appeals against the above-named respondent to the Idaho Supreme Court from the Final Judgment and Sentence entered in the above-entitled action on the 4th day of February, 2009, the Honorable Charles W. Hosack, presiding.
2. That the party has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Idaho Appellate Rule (I.A.R.) 11(c)(1-10).

[Signature]

3. A preliminary statement of the issues on appeal, which the appellant then intends to assert in the appeal, provided any such list of issues on appeal shall not prevent the appellant from asserting other issues on appeal, is:

- (a) Did appellant's counsel fail to provide effective assistance of counsel?

4. There is a portion of the record that is sealed. That portion of the record that is sealed is the Presentence Investigation Report (PSI).

5. **Reporter's Transcript.** The appellant requests the preparation of the **entire reporter's standard transcript** as defined in I.A.R. 25(c). The appellant also requests the preparation of the additional portions of the reporter's transcript:

- (a) ~~All Recorded Proceedings;~~
- (b) Status Conference June 11, 2008 (Court Report: Joanne Schaller, no estimation of number of pages);
- (c) Motion to Suppress/Limine Hearing held June 21, 2007 (Court Reporter: Joanne Schaller, no estimation of pages was listed);
- (d) Motion to Suppress/Limine Hearing held July 19, 2007 (Court Reporter: Joanne Schaller, no estimation of pages was listed);
- (e) Motion to Suppress/Limine Hearing held November 8, 2007 (Court Reporter: Joanne Schaller, no estimation of pages was listed);
- (f) Pretrial Conference held January 14, 2008 (Court Reporter: Keri Veare, no estimation of pages was listed);

- (g) Status Conference held February 11, 2008 (Court Reporter: Joanne Schaller, no estimation of pages was listed);
- (h) Status Conference held March 3, 2008 (Court Reporter: Sherron Walstad, estimated pages less than 100);
- (i) Pretrial Conference held March 10, 2008 (Court Reporter: Joanne Schaller, estimated pages less than 100);
- (j) Interim Hearing held April 14, 2008 (Court Reporter: Joanne Schaller, no estimation of pages was given);
- (k) Status Conference held April 16, 2008 (Court Reporter: Joanne Schaller, no estimation of pages was given);
- (l) Status Conference held April 18, 2008 (Court Reporter: Joanne Schaller, no estimation of pages was given);
- (m) Interim Hearing held May 12, 2008 (Court Reporter: Allison Stovall, no estimation of pages was given);
- (n) Pretrial Conference held June 9, 2008 (Court Reporter: Joanne Schaller, no estimation of pages was given);
- (o) Motion Hearing held June 10, 2008 (Court Reporter: Joanne Schaller, no estimation of pages was listed on the Register of Actions);
- (p) Jury Trial held June 16-19, 2008, to include the voir dire, opening statements, closing arguments, jury instruction conferences, reading of the jury instructions, any hearings regarding questions from the jury during deliberations, return of the verdict, and any

polling of the jurors (Court Reporter: JoAnn Schaller, no estimation of pages was listed on the Register of Actions);

- (q) Sentencing Hearing held on January 30, 2009 (Court Reporter: JoAnn Schaller, not estimation of pages was listed on the Register of Actions).

6. **Clerk's Record.** The appellant requests the standard clerk's record pursuant to I.A.R. 28(b)(2). The appellant requests the following documents to be included in the clerk's record, in addition to those automatically included under I.A.R. 28(b)(2):

- (a) Affidavit of Support of Warrantless Arrest filed August 28, 2006;
- (b) Plaintiff's Witness List filed November 3, 2006;
- (c) Preliminary Hearing Transcript filed November 27, 2006;
- (d) Affidavit of Mark Beavers Re: Suppression filed January 29, 2007;
- (e) Affidavit of Stephanie Jackson filed January 29, 2007;
- (f) Affidavit of Toxicologist Elliott Briggs filed January 29, 2007;
- (g) Any affidavits, responses, briefs, memorandums filed regarding ht motion to suppress including, but not limited to, the Memorandum in Support of Motion to Suppress and Motion to Dismiss lodged January 29, 2007; Brief in Opposition to Defendant's Motion to Suppress and Motion to Dismiss lodged February 1, 2007, Supplemental Brief in Support of Motions lodged June 15, 2007, Affidavit in Support of Motion to Suppress filed June 15, 2007, Plaintiff's Second Supplemental Brief in Support of Motions lodged

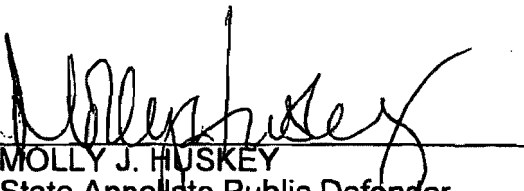


- July 12, 2007, Supplemental Authority in Support of Memorandum in Opposition to Motion to Suppress filed July 19, 2007, and Post-Hearing Brief lodged July 24, 2007;
- (h) Transcript of Probably Cause for Search Warrant hearing filed April 6, 2007;
 - (i) Memorandum in Support of Motion in Limine lodged October 25, 2007;
 - (h) Plaintiff's Supplemental Witness List filed January 15, 2008;
 - (i) Letter from Defendant re: Attorney filed February 27, 2008;
 - (k) Plaintiff's 2nd Supplemental Witness List filed April 9, 2008;
 - (l) All proposed and given jury instructions including, but not limited to, the Plaintiff's Requested Jury Instructions filed April 11, 2008, and Jury Instructions Given filed June 19, 2008;
 - (j) Inmate Request Form filed May 14, 2008, July 7, 2008, and October 27, 2008;
 - (k) Transcript of Excerpt (1) of Jury Trial Testimony of Mark Beavers filed October 30, 2008;
 - (l) State's Sentencing Memorandum lodged January 23, 2009;
 - (m) Defendant's Response to State's Sentencing Memorandum filed January 30, 2009; and
 - (n) Any exhibits, including but not limited to letters or victim impact statements, addendums to the PSI or other items offered at sentencing hearing.

7. I certify:

- (a) That a copy of this Amended Notice of Appeal has been served on the Court Reporters, Joanne Schaller, Keri Veare, Sherron Walstad and Allison Stovall;
- (b) That the appellant is exempt from paying the estimated fee for the preparation of the record because the appellant is indigent. (Idaho Code §§ 31-3220, 31-3220A, I.A.R. 24(e));
- (c) That there is no appellate filing fee since this is an appeal in a criminal case (Idaho Code §§ 31-3220, 31-3220A, I.A.R. 23(a)(8));
- (d) That arrangements have been made with Kootenai County who will be responsible for paying for the reporter's transcript, as the client is indigent, I.C. §§ 31-3220, 31-3220A, I.A.R. 24(e); and
- (e) That service has been made upon all parties required to be served pursuant to I.A.R. 20.

DATED this 15th day of April, 2009.


MOLLY J. HUSKEY
State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 15th day of April, 2009, caused a true and correct copy of the attached AMENDED NOTICE OF APPEAL to be placed in the United States mail, postage prepaid, addressed to:

STACI ANDERSON
KOOTENAI COUNTY PUBLIC DEFENDERS OFFICE
PO BOX 9000
COEUR D ALENE ID 83816 9000

JOANN SCHALLER
COURT REPORTER
PO BOX 9000
COEUR D ALENE ID 83816 9000

ALLISON STOVALL
COURT REPORTER
PO BOX 9000
COEUR D ALENE ID 83816 9000

SHERRON WALSTAD
COURT REPORTER
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KERI VEARE
COURT REPORTER
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BILL DOUGLAS
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KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
PO BOX 83720
BOISE ID 83720 0010
Hand delivered to Attorney General's mailbox at Supreme Court


HEATHER R. CRAWFORD
Administrative Assistant

MJH/TMF/SBT/hrc

722

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO	)	SUPREME COURT # 36183
Plaintiff/Respondent	)	CASE NUMBER CR2006-18813
	)	CASE NUMBER CR2007-27416
)	
VS.	)	CLERK'S CERTIFICATE
)	
MARK D. BEAVERS)	
)	
<u>Defendant/appellant</u>)	

I, Theresa A. Carroll, Clerk of the District Court of the First Judicial District of the State of Idaho, in and for the County of Kootenai, do hereby certify that the foregoing Record in this cause was compiled and bound under my direction and is a true, correct and complete Record of the pleadings and documents requested by Appellate Rule 28.

I further certify that the following will be submitted as exhibits to this Record on Appeal:

PRESENTENCE REPORT (FILED 1-12-09)
PICTURES
TRANSCRIPT – PRELIMINARY HEARING (FILED 2-8-08)
DEPOSITION OF ANNE NORD (FILED 4-14-08)
TRANSCRIPT – PRELIMINARY HEARING (FILED 11-27-06)
TRANSCRIPT – PC/SEARCH WARRANT (FILED 4-6-07)
EXCERPT (1) OF JURY TRIAL TESTIMONY OF MARK BEAVERS

PLAINTIFF'S:

CONTROLLED SUBSTANCE ANALYSIS – ADMITTED 10-6-06
CONTROLLED SUBSTANCE ANALYSIS – ADMITTED 10-6-06
AVISTA METERED HISTORY – ADMITTED 7-19-07
DEF HISTORY – ADMITTED 7-19-07
PICTURES – ADMITTED 10-28-08
PICTURES – ADMITTED 10-28-08
CONTROLLED SUBSTANCE ANALYSIS – ADMITTED 10-29-08
CERTIFICATE OF TRUE COPY ADMITTED 10-30-08

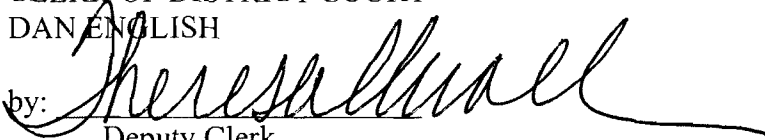
DEFENDANT'S EXHIBITS:

PICTURES – ADMITTED 7-19-07
ROCKWOOD CLINIC – MEDICAL RECORDS FILED 10-29-08
THCF MEDICAL CLINICS – ADMITTED 10-29-08
LETTER LABEL FILED 10-29-08

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said
Court this 18 Day of May, 2009.

CLERK OF DISTRICT COURT
DAN ENGLISH

by:


Deputy Clerk

CLERK'S CERTIFICATE

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

State of Idaho
Plaintiff/Respondent

SUPREME COURT # 36183
CASE #: CR06-18813
CASE # CR07-27416

VS.

CERTIFICATE OF SERVICE

MARK D. BEAVERS

Defendant/Appellant

I, Theresa A. Carroll, Deputy Clerk of the District Court of the First Judicial District of the State of Idaho, in and for the County of Kootenai, do hereby certify that I have personally served or mailed, by United States Mail, one copy of the Clerk's Record to each of the attorneys of record in this cause as follows:

Ms. Molly Huskey
State Appellate
Public Defender
P.O. Box 83720
Boise ID 83720-0005

Attorney for Appellant

Mr. Lawrence Wasden
Attorney General
State of Idaho
700 W. Jefferson # 210
Boise ID 83720-0010

Attorney for Respondent

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of
said Court this 18 Day of May, 2009.

Dan English
Clerk of District Court

By 
Theresa A. Carroll, Deputy Clerk

CERTIFICATE OF SERVICE